IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

THE STATE OF TEXAS *
*
VS. * C.A. NO. 5:96CV91
*
THE AMERICAN TOBACCO *
COMPANY, ET AL *

* * * * *

DEPOSITION OF

DEBORAH PAOLINI

On July 28, 1997, the video deposition of DEBORAH PAOLINI, a witness in the above-styled cause, was taken at the instance of the Plaintiff in the offices of Maroney, Crowley, Bankston, Richardson & Hull, 701 Brazos, Austin, Texas, pursuant to Stipulation of Counsel contained herein.

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Those persons present were as follows:

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MR. LARRY THORPE
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VIDEOTAPE OPERATOR/TECHNICIAN:

Lou Getz
Legal Media Systems, Inc.
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Houston, Texas 77007

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E X H I B I T S I N D E X

DEPOSITION OF DEBORAH PAOLINI

July 28, 1997

EXHIBIT NO.	DESCRIPTION	PAGE
NO. 1,	THE DEPOSITION NOTICE	5
NO. 2,	CURRICULUM VITAE	48
NO. 3,	A REPORT ENTITLED "DEBORAH PAOLINI"	94
NO. 4,	LIST OF OPINIONS OF DEBORAH L. PAOLINI PURSUANT TO CMO PARAGRAPH 7(b)(1)	96

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(PAOLINI EXHIBIT NO. 1, THE DEPOSITION NOTICE, WAS MARKED FOR IDENTIFICATION. SAME WILL BE FOUND AT THE CONCLUSION OF THIS DEPOSITION.)

THE REPORTER: Do you have any stipulations that you would like to put on the record?

MR. QUINN: Pursuant to the Federal Rules.

MS. EISENBERG: For the record, I informed Mr. Quinn that there had been a clerical error in connection with the documents that were provided by defendants for Ms. Paolini's deposition.

One of the documents that was included in the list - or in the group of documents was one which Ms. Paolini has not reviewed and is unaware of and is not relying on. And that's the document with the Bates range 28130192405 through 28130192477 titled "Texas Department

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09:58:52 of Human Resources Office of Management Services."

09:59:02 The document that should have been produced and which was given to Mr. Quinn approximately an hour ago is a document which had been produced in the case titled "House Research Organization Special Legislative Report Nursing Homes in Texas: A

09:59:14 Guide to the Issues," dated October 14, 1992, bearing a Bates range of 28150TH001062 through 28150TH001144. And I informed Mr. Quinn that that's a document that

09:59:36 Ms. Paolini had reviewed and will be relying on for the basis of her opinions; although, I did inform Mr. Quinn that her review and reliance is really limited to Pages 1

09:59:48 through 18 of that document.

VIDEO OPERATOR: Today is the 28th day of July, 1997. It's 10:00 o'clock, and we are on the record.

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DEBORAH PAOLINI,

having been duly sworn, testified as follows, to-wit:

10:00:20 EXAMINATION BY MR. QUINN:

Q Please tell us your name.

A Debra Paolini.

Q Ms. Paolini, my name is Cris Quinn; and I am one of the attorneys representing the State of
10:00:32 Texas in this litigation.

Have you ever had your deposition taken before?

A Yes, I have.

Q Approximately how many times?

10:00:42 A Twice.

Q You understand that you are under oath here today?

A Yes, I do.

Q You understand that the testimony you are
10:00:54 giving today could be used at trial to try to impeach you or could be used at trial. You understand that?

A Yes.

Q If I ask a question that you do not
10:01:04 understand, please stop me and ask me to rephrase

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10:01:06 that question. Will you do that, please?

A Yes.

Q If at any time you need to take a break, please let us know; and we will be happy to do that. Okay?

10:01:14

A All right.

Q Where is your residence address?

A [DELETED]

Q How long have you lived at that address?

10:01:24 A Approximately nine years.

Q Are you married?

A No, I'm not.

Q Have you ever been married?

A Yes.

10:01:30 Q How many times?

A Twice.

Q What is the name of your first husband?

A James, middle initial "L," White.

Q Where does Mr. White live?

10:01:44 MS. EISENBERG: Objection, Counsel, relevance.

MR. QUINN: Okay. Your objection is noted.

(By Mr. Quinn)

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10:01:52 Q Where does Mr. White live?
A In ([DELETED]
Q And approximately what years were you married to Mr. White?
10:02:10 A 1975 through 1985.
Q Did you have any children from that marriage?
A Yes.
Q How many?
10:02:16 A Two.
Q And their names and ages?
A Amy, 21; Jeremy, 18.
Q Where did that divorce take place? What county?
10:02:34 MS. EISENBERG: Objection, Counsel, relevance.
Q You can answer.
A Webb.
Q Webb County?
10:02:38 A Yes.
Q And when was your second marriage and to whom?
A August of '87; and it was to Dennis, middle initial "E," last name Lally.
10:02:54 Q Could you spell that last name?

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10:02:58 A L-a-l-l-y.

Q Where did that divorce take place?

A Bexar County.

Q Did you have any children from that
10:03:10 marriage?

A No.

Q What is your business address at the
present time?

A 7602 Louis Pasteur, San Antonio, Texas.

10:03:28 Q Who do you currently work for?

A DSJ Health.

Q What do you do for DSJ Health?

A I am a nursing home administrator.

Q How long have you worked for DSJ Health?

10:03:44 A June the 10th of this year.

Q Where were you born and raised?

A I was born in Del Rio, Texas.

Q Did you attend public schools in Del Rio?

A Yes, I did.

10:04:02 Q What year did you graduate from high
school there?

A 1974.

Q What's your Social Security number?

A [DELETED]

10:04:16 Q What's your Texas driver's license number?

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10:04:20 A [DELETED]
Q What was your maiden name?
A Paolini.
Q Other than White and Lally and Paolini,
10:04:36 have you ever gone by any other names?
A No.
Q Are your parents still living?
A My mother is.
Q Have any close members of your family or
10:04:54 close friends ever suffered from lung cancer or emphysema?
A No.
Q Have you ever been a smoker?
A Yes.
10:05:04 Q Approximately when did you smoke?
A I currently smoke.
Q Okay. When did you start smoking?
A Approximately ten years ago.
Q Before ten years ago, you never smoked?
10:05:30 A I probably might have had one or two in high school, but I wouldn't have considered myself a smoker.
Q Okay. How old were you when you started smoking?
10:05:42 A About - oh, gosh. Okay. From the very

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10:05:44 first time?

Q That you started smoking regularly.

A That I had a single cigarette?

Q No, ma'am. No, no. When you started
10:05:52 smoking regularly.

A I still wouldn't say I smoke regularly. I
smoke on occasion.

Q Approximately how many packs of cigarettes
do you smoke a week or a month or a day?

10:06:06 A I smoke no cigarettes. I smoke cigars.

Q Okay. So, for about ten years or so you
occasionally smoke a cigar?

A Occasionally.

Q And do you smoke anything other than
10:06:18 cigars?

A No.

Q Were either of your parents smokers?

A My mother was.

Q Does she still smoke?

10:06:28 A No, she does not.

Q How long ago did she quit smoking?

A At least 15 years ago.

Q Did you try to encourage her to quit
smoking cigarettes?

10:06:48 A I'm sure I did.

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10:06:50 Q Why is that?
A Because everything you hear says smoking is bad for you.
Q Do either of your children smoke?
10:07:02 A No, they do not.
Q Did you advise your children not to smoke?
A Yes, I did.
Q Did you prohibit your children from smoking?
10:07:12 A In my presence.
Q Do you allow cigarette smoking in your home?
A No, I do not.
Q Do you allow cigarette smoking in your vehicle?
10:07:20
A No, I do not.
Q Have you yourself ever been a party to any type of lawsuit other than your divorces?
A Yes, I have.
10:07:40 Q What type of lawsuits?
A Employee injury as well as resident injury.
Q Those would be employees of the nursing home?
10:07:54 A Yes.

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10:07:56 Q Have you ever been the party that has brought a lawsuit for some reason?

A No.

Q Basically is your litigation experience as

10:08:10 a party in your role as an employer at nursing homes?

A Yes.

Q You told me you think that you have given approximately two depositions before; is that

10:08:20 correct?

A Yes, sir.

Q Could you please explain for me the context of those depositions?

MS. EISENBERG: Objection.

10:08:32 Q Okay. When you gave depositions, were those given in the lawsuits brought by employees?

A Yes.

Q Have you ever been hired to testify as an expert witness in any other type of litigation

10:08:46 before this case?

A No.

Q When did you give the prior depositions?

A I don't remember exactly what year it was.

Q Would it be more than two or three years

10:09:16 ago?

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10:09:16 A Yes.

Q And I take it that the lawyer for the injured employee was taking your deposition?

A Yes, sir.

10:09:30 Q And I don't want to belabor this point at all; but just generally, could you describe for me the types of claims or issues that were involved in the first deposition you gave?

A Yes. It had to do with a young female patient that died in our nursing home.

10:09:46

Q And who were you working for at that time?

A It was called Vari-Care, Incorporated.

Q At which location?

A Silver Creek Manor in San Antonio, Texas.

10:10:06 Q Approximately when was that deposition given?

A Again, I don't remember exactly the year. It was more than two or three years ago.

Q Do you remember the patient's name or the name of the lawsuit?

10:10:16

A The patient's name was Suzette Perales.

Q Could you spell that last name?

A P-e-r-a-l-e-s.

Q What was the context or the nature of the issues in the second deposition you gave?

10:10:40

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10:10:44 A It was related to an employee injury.
Q What facility were you working at at the time of that deposition?
A Silver Creek Manor.
10:10:54 Q And what was the name of that employee, if you remember?
A I remember his first name being Robert.
Q Was it a lifting-type case or something like that?
10:11:02 A Yes, it was.
Q Alleged back strain?
A Yes, it was.
Q Have you ever been employed as a consultant in any type of litigation before this
10:11:18 case?
A No.
Q Let me back up a little bit and ask about your educational background, if I might. Could you please give me the benefit of your educational
10:11:38 background?
A Explain "benefit."
Q Describe for me your educational background.
A I graduated from high school in Del Rio,
10:11:50 Texas; attended a year at Southwest Texas Junior

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10:11:56 College in Uvalde, Texas; then attended a 200-hour administrator in training course in Austin, Texas, at the University of Texas; attended additional educational time at McLennan College in Waco,
10:12:16 Texas. That's pretty much it.
Q Okay. Was there anything significant about the year of college that you attended at Southwest Texas Junior College in Uvalde that gives you some experience or expertise in this particular
10:12:34 case?
A No.
Q Generally, you just took entry-level freshman-type courses that year?
A That's correct.
10:12:42 Q Approximately what year was it that you attended Southwest Texas Junior College?
A It would have been the fall of '74.
Q Did you just go one semester?
A Yes.
10:12:54 Q What were your grades like?
A Average.
Q Average being?
A B's and C's.
Q B's and C's?
10:13:02 A Uh-huh, yes.

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Q Okay. When did you come to Austin to take the course in nursing home administration?

A That would have been 1981, I believe.

Q What got you interested in taking the course in nursing home administration?

A I began working in a nursing home.

Q How did you initially been working in the nursing home?

A I was there as an office manager.

Q Describe for me the curriculum of the 200-hour administrator's course you took at UT.

A They were subject matters specifically dealing with gerontological aspects, administration, dietary, housekeeping, laundry, social services, law. That's pretty much it.

Q Do you recall the names of any textbooks that were used at that course?

A No. I'm sorry I don't.

Q Were you provided with the course materials by whoever sponsored the program?

A Yes.

Q Who was it that sponsored this particular program?

A The University of Texas here in Austin.

Q And that would have been whatever books or

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course materials they would have supplied in approximately 1981?

A Correct.

Q Did you maintain those books or whatever materials were provided to kind of keep in your reference library?

A Yes.

Q And you told me that you went to MCC in Waco for some follow-up courses; is that correct?

A That's correct.

Q Approximately when was that?

A I'm going to say 1983, approximately.

Q Describe for me the type of courses that you took at McLennan County.

A Those would be the same type, gerontological courses.

Q Approximately how long was the course at MCC?

A I believe it was about six months. It was several days every other week.

Q Do you recall the total number of hours? Was it about the same as the UT program or a little less?

A I'm sure it was a little less. I don't remember exactly.

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10:16:08 Q Did you take the course at MCC just to further your education, or was that also required in order for you to get your license?

A It was required.

10:16:22 Q Since the course at MCC in 1983, have you attended any other courses?

A Yes.

Q Could you describe those for me, please.

A There is several subject matter that is
10:16:36 required by the licensure board to retain my administrator license, and those are given - they are called continuing education hours. They are given in various cities, and I have to have so many hours every two years.

10:16:52 Q Do you keep a list of that continuing education somewhere?

A Somewhere.

Q Have any of the seminars or courses that you have attended or studied dealt with the health
10:17:18 effects of tobacco?

A No.

Q Have any of the courses you have attended or the education you received deal with epidemiology?

10:17:28 A In regards to?

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10:17:34 Q In regards to smoking-related illnesses?
A No.
Q Have you ever studied what diseases are related to tobacco products?
10:17:46 A Can you be more specific?
Q Yeah. Have you ever attended any courses or done any studies or research of your own dealing with what diseases or conditions are related to the use of tobacco products?
10:18:06 A Prior to?
Q Prior to being involved in this case?
A No, sir.
Q Do you have any training in the area of statistical analysis?
10:18:20 A No.
Q Do you have any training or expertise in the area of industrial hygiene?
A No.
Q Where did you rank in terms of your
10:18:44 graduating class in high school, if you recall; top half, top quarter, in the middle?
A Probably somewhere in the middle.
Q Have you ever authored any articles dealing with nursing homes or anything in your area
10:19:00 of expertise?

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A No.
Q Have you ever been a speaker at any of the continuing education seminars that you attend?
A No.
Q Have you ever been a speaker even at something like the Lion's Club or the Kiwanis' Club where you have discussed nursing home issues?
A Yes.
Q Could you describe that for me, please.
A I have gone to different organizations and clubs and given talks in regards to nursing homes in a very general manner.
Q Have you ever given any speeches or asked to give any speeches in the area of tobacco-related diseases?
A No.
Q Before you became involved in this case, had you ever gone to any of these health-type libraries and done any research?
MS. EISENBERG: On what?
Q It's a poorly phrased question.
After you received your administrator's license but before you were hired on this case, had you ever gone to any medical libraries or college libraries to research any subjects relating to

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health?
A Any subjects related to health?
Q Yes, ma'am.
A Not that I recall.
Q How did you get hired on this case? Who contacted you?
A Charles Deacon.
Q Who is Charles Deacon?
A He's an attorney in San Antonio.
Q How did you know Mr. Deacon?
A I worked with Mr. Deacon on several cases.
Q What type of cases had you worked with Mr. Deacon?
A Employee injury and resident injury.
Q Had Mr. Deacon been the lawyer for your employer?
A Yes.
Q At that time was your employer self-insured, or was this through some sort of insurance policy?
A Self-insured.
Q Did you just know Mr. Deacon in a professional manner before this - before he approached you about testifying in this type of case?

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10:21:48 A Yes.
Q What did he tell you?
A He asked me if I would be interested in becoming an expert witness.
10:21:58 Q What did he tell you about the case?
A He told me that the State of Texas had sued the tobacco company or was in the process of suing the tobacco company in regards to Medicaid dollars that were expended for residents that were
10:22:22 in nursing homes.
Q Did he tell you anything else about the case or why he thought you could be helpful?
A He knew of my experience and longevity in the field of nursing home administration.
10:22:36 Q Did he tell you anything else about the case at that point?
A No, he did not.
Q Did he tell you at that point in time why he thought that you could be helpful in the case?
10:22:48 A Again, because of my longevity and experience in the nursing home.
Q How many times have you met with or spoken with representatives of whoever hired you about this matter?
10:23:16 MS. EISENBERG: Counsel, I'm

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10:23:16 going to object based on
attorney-client privilege.

MR. QUINN: She's your client?
She's a retained expert witness.

10:23:30 MS. EISENBERG: Correct.

(By Mr. Quinn)

Q How many times have you spoken with
lawyers for the tobacco companies?

10:23:48 A Approximately three times.

Q What research, if any, have you personally
done on this case - while working on this case?

A I have researched some of the records that
are in my own facility dealing with different
10:24:14 patients. I have also researched and read several
articles pertaining to the elderly in nursing homes.

Q Have you yourself gone to any libraries or
done any computer-assisted research to find some of
these articles you have read?

10:24:42 A I personally have not.

Q Is everything that you have read and
relied on - have all of those documents been
supplied to you by attorneys for the tobacco
industry?

10:24:52 A No.

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Q Where did you obtain the documents that you have relied upon in this case?
A I had an assistant working for me that went to the library.
Q And who was that assistant?
A Yvonne Castorena.
Q How does she spell that?
A First name or last or both?
Q Well, let's do both to be certain.
A Okay. Y-v-o-n-n-e, last name C-a-s-t-o-r-e-n-a.
Q We will get specifically to the documents in a minute. But which of the documents -- Did your assistant come up with all of the documents or some of the documents?
A Some of the documents.
Q And some of the documents have been supplied to you by the lawyers for the tobacco industry?
A Yes.
Q Have you had to sign any type of agreement with respect to your relationship as an expert witness for the tobacco industry in this case?
A No.
Q Who was it that actually hired you on this

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10:26:06 case?

A Lucy Eisenberg.

Q When was that?

A I'm sorry. I don't remember.

10:26:20 Q Have you kept any time sheets or anything dealing with the time that you have spent working on this case?

A Yes, I have.

Q Did you bring those today?

10:26:26 A No.

Q Can you give me your best estimate of about how much time you have spent working on this case?

MS. EISENBERG: Don't guess. If you don't know, don't guess.

10:26:46

A I don't know.

Q Were you given a copy of the subpoena about what documents you were supposed to bring to this deposition today?

10:27:06 A No.

Q Were you - have you been made aware -- Let me ask -- I'll get back to that in a minute.

Did you tell me approximately when you were hired by Ms. Eisenberg to work on this case?

10:27:20 A I don't remember.

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10:27:24 Q Would there be some documents somewhere that would indicate when you were hired?

A Yes.

Q And what would those documents be?

10:27:34 A Where would they be?

Q What would they be?

A It would be the first time we spoke on the telephone.

Q And did you make some notes?

10:27:40 A Yes.

Q Are those notes still in existence?

A Yes.

Q What were you told by Ms. Eisenberg on that first conversation?

10:28:10 A That I had been retained as the expert witness for the nursing home.

Q Did you explain to Ms. Eisenberg what your area of expertise was?

A I did that upon initial interview.

10:28:22 Q When you were initially -- Who initially interviewed you?

A Lucy Eisenberg.

Q And when was that?

A October of '96.

10:28:36 Q Where was that done?

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10:28:36 A In Austin.

Q Who else was present at that meeting?

A Charles Deacon.

Q Anyone else?

10:28:44 A No.

Q What do you state is your area of expertise?

A Nursing home administration and management.

10:29:04 Q Anything else?

A Care of the elderly in a nursing home setting.

Q Did Ms. Eisenberg tell you that she was hiring you on behalf of one client or more than one

10:29:34 client or do you know?

A J. R. (sic) Reynolds.

Q Did you have to hire - sign any sort of contract?

A No.

10:29:56 Q What are the terms of whatever financial arrangement you have with RJR in this case?

A I'm paid a fee based on hours that I spend either researching or involved in meetings.

Q What is that fee?

10:30:12 A $150 an hour.

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10:30:20 Q Also reimbursed out-of-pocket expenses?
A Yes.
Q Are you compensated in any other way for your work on this case other than what you have just
10:30:32 told us?
A No.
Q How many face-to-face meetings have you had with any of the lawyers for the tobacco industry with respect to the issues in this case?
10:30:58 A I believe three.
Q Could you describe for me when those meetings - when the first meeting took place? Is that when you met Ms. Eisenberg and she interviewed you?
10:31:12 A That was the first time.
Q And you believe that was in October of 1996?
A Yes.
Q When was the second meeting?
10:31:22 A Here in Austin.
Q Approximately when?
A I'm going to say three months ago, approximately.
Q Who was present at that meeting?
10:31:46 A Ms. Eisenberg and another gentleman. I do

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10:31:46 not recall his name.

Q Was it your understanding that he was a lawyer for the tobacco company or was he a doctor or do you know?

10:31:54 A He was an attorney.

Q Was it your impression he was with Ms. Eisenberg's firm?

A Yes -- No. I'm sorry. He was not with Ms. Eisenberg's firm.

10:32:08 Q What was your understanding of who this other lawyer was or who his client was?

A He was an attorney out of McAllen, Texas; and he was also an attorney working on this case.

Q And when was the third meeting?

10:32:24 A In Houston, Texas.

Q Approximately when was that?

A Three weeks ago, maybe.

Q Who was present at that meeting?

A Ms. Eisenberg. I'm drawing a blank.

10:32:48 Q Anyone else?

A No.

Q And then were there any later meetings with Ms. Eisenberg?

A Yes.

10:32:58 Q When was that?

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

A Yesterday.

Q And yesterday you met to get ready for the deposition today?

A Correct.

Q Who was present at that meeting?

A Ms. Eisenberg.

Q Anyone else?

A No.

Q What kind of documents or notes have you generated with respect to the work you have done on this case?

A Time spent actually reviewing documentation.

Q So, you have some sort of time sheet?

A Yes, I do.

Q And I guess when you reviewed documents you would have been taking notes?

A Not necessarily.

Q Have you made any notes with respect to the work that you have done on this case?

A No.

Q Other than the notes from the initial phone conversation?

A Can you be specific about the word "notes"?

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:34:04 Q Yeah. I mean, have you made any entries in computers, made handwritten notes, typed up your thought processes from what you have reviewed in these records?
10:34:18 A I have kept notes on the time spent reviewing documentation.
Q Describe what would be contained in those notes.
A Time spent reviewing the documentation.
10:34:36 Q Have you dictated any information?
A No.
Q It's your testimony here today under oath that you have made no written notes on paper to write your thoughts down about what you are
10:34:52 reviewing and what you are doing on this case?
A No formal notes.
Q You made any informal notes other than the time sheets?
A Yes.
10:35:00 Q Okay. Describe those for me.
A In reviewing documentation and literature if there was anything that I had a question on, I would write myself a note to do further investigation.
10:35:14 Q Did you save any of that?

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:35:16 A No.

Q Have you retained - other than the articles that have been produced by Ms. Eisenberg and the report that was given to me last week - have 10:35:32 you - do you have any other documents other than your time sheets relating to this case?

A No, I do not.

Q Other than the assistant that you have told us about, have you consulted with any other 10:35:58 people who purport to be expert witnesses about any of the issues covered in your report?

A No.

MS. EISENBERG: You might want to take a quick break here.

10:36:14 MR. QUINN: Okay.

(By Mr. Quinn)

Q Have you talked to any doctors or anybody who have supplied you information?

10:36:22 A Doctors, no.

Q Have you talked to people with the State of Texas or with the Department of Health and Human Services?

A I'm sorry. Yes, I have. Yes, I have.

10:36:32 Q Okay. Who have you spoken with?

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10:36:36 A Tom Seuhs. Tom Seuhs. And I believe he spells that S-e-u-h-s.
Q Other than Tom Seuhs have you talked to anybody?
10:36:46 A No.
Q What is your understanding of who Tom Seuhs is?
A Tom Seuhs is the executive director for the Texas Health Care Association.
10:36:58 Q And what have you and Mr. Seuhs discussed?
A I was looking for different literature regarding when certain standards and certain policy was enacted.
Q And he helped in that area?
10:37:12 A Yes, he did.
MR. QUINN: Do you still need to take a break?
MS. EISENBERG: No.

(By Mr. Quinn)
Q How many times did you meet with or talk to Tom Seuhs?
A Twice.
Q Was that in person or just over the phone?
10:37:30 A Over the telephone.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:37:32 Q Approximately when was that - when were those conversations?
A I believe it was the time we were in Houston when I was meeting with Ms. Eisenberg, and
10:37:48 then I believe I called him from the nursing home that I'm at now in San Antonio.
Q And would those be reflected in your time sheet?
A Yes.
10:38:12 Q What did you ask your assistant whose name I wrote down earlier - but the one who helped you with the research? What did you ask Ms. Castorena?
A Castorena.
Q Castorena to do?
10:38:26 A I asked her to go to the library or to look for any reference material in regards to the elderly in nursing homes and smoking-related diseases.
Q What is Ms. Castorena's educational
10:38:42 background or training?
A She is an RN as well as a master degree individual.
Q She has a masters in nursing?
A She has a masters in management. I
10:39:00 believe it is in management.

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Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:39:06 Q Is she director of nurses at one of your nursing homes?
A She was.
Q Who does she work for now, if you know?
10:39:10 A She is unemployed.
Q Is she still in San Antonio?
A Yes.
Q Do you know her phone number?
A No, I do not.
10:39:26 Q Did she bring any articles back to you about elderly patients and smoking and smoking-related diseases?
A No. She was not able to find any.
Q Approximately how much time did
10:39:42 Ms. Castorena spend on that project under your direction?
A I believe there were six hours documented.
Q Do you know what data bases she researched or where she researched?
10:39:54 A Yes. She went to the library at the University of Texas in San Antonio.
Q Did she tell you that she couldn't find any articles dealing with elderly patients and smoking-related diseases?
10:40:16 A Specifically that topic, yes, she told me

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:40:18 she could not find any.

Q What articles did Ms. Castorena retrieve for you?

A She retrieved articles dealing with the
10:40:34 nursing home patients, longevity, dealing with grief over placement of nursing home patients. She also retrieved articles in dealing with behaviors of nursing home residents. That's pretty much about it.

10:40:52 Q Did she retrieve any articles that have not been produced to me because you didn't rely on them?

A Yes.

Q Did you keep those articles somewhere,
10:41:04 those that you have reviewed but not relied on?

A Yes, I do.

Q Do you have a list of those somewhere?

A I don't have a list, but I do have the articles.

10:41:12 Q And where are those articles?

A They are actually in the trunk of my car.

Q Good. Approximately how many articles are there that were retrieved but that you did not rely on?

10:41:32 A There are several, many articles.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:41:34

Q Ten or more?

A Definitely ten or more.

Q Do you recall the subject matter of those articles, some of them?

10:41:50

MS. EISENBERG: Asked and answered, Counsel.

Q I guess, since you have them here with you, we can get those later at the break.

Can you tell me what was discussed at the

10:42:34

first meeting you had with Ms. Eisenberg and Mr. Deacon?

A I was just asked to talk about my experience in long term care.

Q Were you told anything else about the

10:42:52

nature of the litigation or what Ms. Eisenberg wanted you to do in this case?

A Not at that time.

Q Were you given any assignments at that time?

10:43:02

A No.

Q Did you begin your research at that time?

A No.

Q I guess if you didn't have an assignment at the first meeting in October, 1996, it would have

10:43:14

been difficult to do research.

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Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

MS. EISENBERG: Objection, Counsel.

Q Is that correct?

MS. EISENBERG: Argumentative.

Q Is that correct?

MS. EISENBERG: You don't have to answer.

Q Let's move on to the second meeting that was about three months ago. I guess it's after that meeting is when you started your work on this case?

A Yes.

Q What was discussed at this second meeting that took place about three months ago in Austin?

A I was asked different questions about patients in the nursing home.

Q By who?

A By Ms. Eisenberg.

Q What type of questions were you asked?

A What types of patients were in the facility, how many facilities I have been in, what were the major reasons why residents were in the nursing home. Generally - those are generally the topics.

Q Okay. Were you given any assignments at that point in time?

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:44:44 A I don't believe so.

Q Between the second meeting about three months ago and the third meeting in Houston about three weeks ago, did you do any work on this case?

10:45:00 A Yes, I did.

Q And what type of work did you do during that time frame?

A I reviewed several articles that were sent to me.

10:45:10 Q Okay. Did you do any research on your own during that time period?

A Yes, I did.

Q And what research was that?

A Again, based on the information I was

10:45:20 reading, I was correlating information that I had in my own facility or with other - different patients.

Q Let's go into that at this point. Tell me what you did to review records or information about patients at your own facility or facilities?

10:45:42 A Length of stay was one of the issues that I looked back at, how long patients stayed in the nursing home generally. I also looked at payer source, differences between the different payers that are in nursing homes. Diagnosis, I looked at

10:46:00 that as well.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:46:04 Q When you looked at those things, did you
make any notes, make any charts, do any statistics,
anything like that?

A No, I didn't.

10:46:14 Q So, you just looked at some of the records
or information you had?

A Yes.

Q Was any of it significant for any reason?

MS. EISENBERG: Objection,
10:46:26 vague.

Q Did you find anything about the length of
stay information that you garnered to be significant
in this case?

MS. EISENBERG: Objection,
10:46:38 vague.

Q You can answer.

MS. EISENBERG: Do you
understand the question?

THE WITNESS: No, I don't.

10:46:46 Q What did your research into the length of
stay in your nursing home in San Antonio provide?

A It was consistent with the articles that I
had been given.

Q Would that also be true with respect to
10:47:00 payer status and diagnosis?

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:47:00 A Yes.
Q Let me ask this: During the period of
time that you have worked at these various nursing
homes listed on your C.V., have you ever witnessed
10:47:22 any sort of fraudulent Medicaid billing practices?
A Absolutely not.
Q During the period of time that you have
worked at the homes listed in your C.V., have you or
people working under you ever submitted any
10:47:38 fraudulent Medicaid documents containing inaccurate
diagnosis?
A No.
Q What were you told was the reason for the
third meeting in Houston about three weeks ago?
10:48:02 A I was there to meet with some attorneys
just to go over some of the data that had been sent
to me.
Q As of that time, had you prepared any sort
of report or any notes or anything for them?
10:48:14 A No.
Q The report that's been prepared in this
case, I take it you have reviewed that report?
A Yes.
Q And was that report prepared by the
10:48:28 attorneys in this case?

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:48:42 A Yes.

Q What subjects were covered at the meeting in Houston about three weeks ago?

A Again, general topics. As I said before,

10:48:56 length of stay, types of nursing home patients that I had had in my nursing homes, when certain policies were enacted in the nursing home.

Q Have the lawyers for the tobacco companies ever asked you about what sort of services are

10:49:20 provided to patients in your nursing homes that have tobacco-related diseases?

A Not specifically.

Q Have you done any research in your own nursing home to determine what type of nursing care

10:49:42 or medical care is provided to patients in your nursing homes who have smoking-related diseases?

MS. EISENBERG: Objection, no foundation, assumes facts not in evidence. You can answer.

10:49:56 A I don't -- Can you repeat the question?

Q Have you done any research to determine what type of nursing care is actually provided to patients in your nursing homes who have smoking-related diseases?

10:50:14 MS. EISENBERG: Same objection.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:50:18 A No, not specific to smoking-related diseases.

Q I take it that you have not been provided any of the depositions taken in this case to review?

10:50:40 A I'm sorry. Say that again.

Q You have not reviewed any of the other depositions that have been taken in this case, have you?

A No, sir.

10:50:56 Q Do you have any previous experience in testifying about nursing home costs?

A No.

Q Do you have any experience as a consultant in litigation where you were not called to testify?

10:51:20 A As a consultant?

Q Yes, ma'am.

A No.

Q Have you ever been called upon by the tobacco industry to help them defend any other type

10:51:30 of case?

A No.

Q Did the attorneys for the tobacco industry provide you with any information or studies about the dangers of tobacco use?

10:51:42 A No.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

10:51:50 Q Do you consider yourself to be an expert in the area of what diseases are related to the use of tobacco products?

A No.

10:52:18 Q What took place during the meeting yesterday with Ms. Eisenberg?

A We reviewed the articles that were to be submitted as well as went over the statements that I had made.

10:52:34 Q About how long did this meeting take place yesterday?

A Three and a half hours.

Q What did Ms. Eisenberg tell you I would ask?

10:52:48 A She really didn't tell me anything that you would ask. We just went over my own specific comments.

Q Were there some areas that you researched and found information about elderly patients that 10:53:20 you didn't pull the articles because you thought it might be harmful to the tobacco industry's position in this case?

A No.

MS. EISENBERG: Would this be a 10:53:42 good time for a break?

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Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

MR. QUINN: It's a good time.

THE VIDEOGRAPHER: We are going off the record. It's 53 minutes after 10:00 o'clock.

(A BRIEF RECESS WAS TAKEN.)

THE VIDEOGRAPHER: It's six minutes after 11:00 o'clock. We are back on the record.

A Now that we are back on the record, I would like to correct one thing that I previously said; and that was in regards to the note taking. I did keep a sheet of paper that reflected the pages in which the documents that were provided to you - what page they were on for the different documents.

Q And is that something that you made over time? As you went through the documents, you made notations about what was specific; or is that a document you created after the report was prepared?

A Actually it was a document that was created prior to the report being prepared. It was when Ms. Eisenberg and I were working together.

Q Were you ever told by anyone with the tobacco companies or their attorneys not to make

51710 5833

http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:08:04 notes of your reviews?

A No.

Q Did the registered nurse who did some research for you, did she turn in any notes to you?

11:08:14 A No.

Q Do you know whether she ran a Med-Line search?

A I'm not sure I understand Med-Line search.

Q You're not familiar with what a Med-Line search is at this point?

11:08:28 A No.

(PAOLINI EXHIBIT NO. 2, CURRICULUM VITAE, WAS MARKED FOR IDENTIFICATION. SAME WILL BE FOUND AT THE CONCLUSION OF THIS DEPOSITION.)

(By Mr. Quinn)

11:08:36 Q I've handed you what's been marked Paolini Exhibit No. 2, which is a copy of what's been provided to me in this case as some of your experience.

Have you reviewed this before?

11:08:58 A Yes. I prepared it.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:09:02 Q Are the entries contained in Exhibit No. 2 accurate with respect to your experience?

A Yes.

MS. EISENBERG: Counsel, if I

11:09:08 could just object for one moment, I may be forgetting, but was there an Exhibit 1?

MR. QUINN: Not yet. I have the notice and subpoena marked as Exhibit

11:09:18 1.

MS. EISENBERG: Thank you.

(By Mr. Quinn)

Q You currently work at the Fredericksburg

11:09:28 in San Antonio?

A Yes, I do.

Q And who owns that?

A DSJ.

Q And why did you leave your prior job to go

11:09:46 to the Fredericksburg at DSJ?

A I was terminated.

Q You were terminated at PersonaCare?

A Actually PersonaCare had sold to Vencor, and I was terminated once Vencor came on board.

11:10:00 Q Kind of in the corporate take over type

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Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

thing, or did they give you some reason for termination?

A They said that I had not reported to them some of the life safety code issues that existed in the facility.

Q What do you mean by life safety code issues?

A Those have to do with the structural piece in the facility - fire alarms, the overall fire system, safety system in the facility.

Q So, they tried to blame you for that?

A Yes, they did.

Q And did you decide it was just best to go on and get another job, or did you fight that?

A Not at all. I decided it was best for me to go on.

Q Okay. Then let's -- For DSJ you are the licensed administrator over the facility that's known or operated as the Fredericksburg?

A Yes, sir.

Q Do you have any assistant administrators there?

A No, I do not.

Q Do you know the name of the prior administrator at that facility?

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Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:11:18 A Chris Miller.
Q Why did he leave that facility?
MS. EISENBERG: Objection, Counsel, relevance.
11:11:24 Q If you know.
A I don't know.
Q Your resume' lists before that that you worked for PersonaCare in several different capacities - or at several different places; is that
11:11:38 right?
A Actually it was one facility, and it was in two capacities.
Q And explain to me what two capacities you held during that time period.
11:11:56 A I was the administrator at Normandy Terrace, but I was overseeing San Pedro Manor as a regional director.
Q And was San Pedro Manor a different facility?
11:12:10 A Yes, sir.
Q It was also located in San Antonio at a different physical address?
A Yes, sir.
Q And how many beds were at San Pedro Manor?
11:12:20 A 150.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:12:22 Q And how many beds were at Normandy
Terrace?
A Licensed for 293.
Q So, exactly what responsibilities or
11:12:32 duties did you have as a regional manager over San
Pedro?
A I was involved in the operations of that
facility in regards to budgetary issues. I also
became involved in any type of - if there were
11:12:44 issues in regards to patient care or regulatory
issues, I was there to assist and give
recommendations.
Q Was there an on-site administrator at San
Pedro?
11:13:00 A Yes, sir.
Q When did PersonaCare sell out to Vencor?
A I don't remember the exact time frame. It
was a few months ago.
Q Who did you report to when the nursing
11:13:28 homes were owned by PersonaCare?
A My divisional vice-president was Cindy
Watson.
Q Did Ms. Watson survive the transition, or
has she gone on?
11:13:40 A She has gone on.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:13:44 Q Do you know where Ms. Watson is at this point?

A No, I do not. I think in Europe, but I do not know.

11:13:52 Q She's lucky. Who was your immediate supervisor once Vencor took over?

A I believe his name was Ron. I'm sorry. I don't remember his last name.

Q Was he officed somewhere in San Antonio?

11:14:12 A No, sir. He was out of Denver, Colorado.

Q Is the Normandy Terrace still open?

A Yes, it is.

Q Still operated by Vencor to the best of your knowledge?

11:14:22 A Yes, it is.

Q Was this resume' prepared specifically for this case?

A It was updated for this case.

Q I guess you had prepared one when you went
11:14:40 looking for the job that you got at the Fredericksburg?

A No. Actually I got the job without updating it; but for this specific case, I decided to update it to reflect current employment.

11:14:56 Q When -- During this time frame listed on

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

your resume - May of '95 to May of '97 - was either of the nursing homes - that is, Normandy Terrace or San Pedro Manor - were they ever placed on vendor hold?

A San Pedro Manor was.

Q While you were the regional manager or before?

A During the same time.

Q What were the reasons for San Pedro Manor being placed on vendor hold?

A Not able to clear a deficiency.

Q And what type of deficiency was that?

A I believe it had to do with the bowel and bladder training program.

Q Was that deficiency eventually cleared?

A Yes, it was.

Q And San Pedro Manor was taken off vendor hold?

A Yes.

Q Were you ever the administrator at any other facilities during which time of your administration that the facility was placed on vendor hold?

A Never.

Q Let's back up to April of '94 to May

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:16:20 of '95 when you worked at Silver Creek Manor. I take it that at that time that facility was owned by Living Centers of America; is that right?

A Yes.

11:16:28 Q And you were the administrator over Silver Creek Manor?

A Yes.

Q And on your resume' here it has you listed as administrator basically at all of these 11:16:40 positions. Were you actually the administrator where it's listed on your resume', or sometimes were you an assistant administrator?

MS. EISENBERG: Objection, compound and assumes facts not in 11:16:52 evidence and misstates the document.

Q Where you are listed as administrator on your resume', were you, in fact, the head administrator at all those locations?

A Yes.

11:17:08 Q At Silver Creek Manor from April of '94 to May of '95 you note there that you enhanced Medicare utilization by 75 percent. What does that mean?

A We were able to do additional training as to what Medicare would actually cover, the types of 11:17:28 illnesses that patients were coming in with; and,

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:17:34 thereby, we increased Medicare census days.

Q Did that mean that more patients were being treated or that the accounting procedures were more accurately reflecting the type of treatment?

11:17:48 A There were more patients receiving the care.

Q Were you able to get more Medicare beds certified, or you just got more people in the facility?

11:17:58 A We actually just were able to get more people being utilized under the Medicare payer system.

Q And where would these patients have come from?

11:18:10 A Typically from the hospital.

Q I'm still unclear. When you say you enhanced Medicare utilization by 75 percent, is that in terms of patient days?

A Yes, sir.

11:18:26 Q Medicare patient days?

A Yes, sir.

Q And those were increased because you were able to train the staff about - to train them about Medicare eligibility of certain types of patients?

11:18:42 A That's correct.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:18:48 Q It indicates during that same time frame - it says you managed a 120-bed long term care facility and 26-bed Medicare Unit. Are those separate units or beds?
11:19:00 A No, sir. It's contained within the same 120 beds.
Q So, there were 26 beds certified for Medicare at that facility?
A Correct.
11:19:12 Q From October of '93 to April of '94, it indicates that you were the regional director of operations for the Living Centers of America; is that correct?
A Yes.
11:19:20 Q And what was your region at that time?
A My region?
Q Yes. It says regional director of operations. What region were you over?
A It was Silver Creek Manor as well as
11:19:34 facilities in Kerrville, Texas.
Q And how many facilities were there in Kerrville?
A There were five.
Q It indicates there were some independent
11:19:46 living apartments. Was that just for -- Describe

51710 5843

http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:19:48 what those were for me.
A That was also considered a facility. We owned 68 individual apartments that were specifically used for the elderly.
11:20:00 Q But those that did not need assistance with ADL's?
A That is correct.
Q Why did you leave -- Or I guess you didn't leave Living Centers of America. You just -- Why
11:20:26 did your responsibilities change in April of 1994?
A In '94 to what?
Q From April -- It indicates in April of 1994 - you have regional director of operations.
A Yes.
11:20:38 Q And above that April of '94 to May of '95 it has you as administrator of Silver Creek Manor.
My question is: Why did your title change or your job change?
A I requested to be able to go back down to
11:20:54 an administrator's position.
Q Okay. Who did you make that request to?
A My immediate supervisor.
Q And what was his or her name?
A Doug Howarton.
11:21:08 Q Thank you. It indicates from July of '91

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11:21:12 to October of '93 you were regional director of operations for Vari-Care, Inc.

A Yes.

Q Were those the same facilities we have
11:21:20 already talked about?

A Yes, sir.

Q I take it Vari-Care, Inc., got bought out by Living Centers of America?

A Yes, sir.

11:21:36 Q And in May of '89 to July of '91 you were at Silver Creek Manor?

A That is correct.

Q And you noted that during that time period you increased occupancy from 72 percent to 98
11:21:46 percent; is that correct?

A Yes.

Q What do you attribute that increase in occupancy to?

A We were able to bring in higher acuity
11:22:04 into the facility; thereby, we were able to bring in a totally different type of patient.

Q What do you mean by higher acuity?

A Patients that needed higher nursing skills services.

11:22:30 Q Roughly what percentage of -- Well, let me

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11:22:32 back up. That wouldn't be fair.
At the time you left Silver Creek Manor -- Well, you didn't leave them. Let me start over again.
11:22:44 After you increased the occupancy rate and the acuity of the type of patients at Silver Creek Manor, what percentage of patients at that facility were private pay versus Medicaid or Medicare patients?
11:23:04 A What percentage were private pay?
Q Right.
A Very minimal. It's probably less than 5 percent.
Q Has that basically been true at most of
11:23:12 the facilities where you have been the administrator?
A Yes, most.
Q But based upon your experience as administrator in the nursing home industry since you
11:23:24 became licensed, what percentage of patients in the nursing homes have been Medicaid-type patients?
MS. EISENBERG: In which nursing homes, Counsel?
MR. QUINN: Just generally if
11:23:34 she would give me an estimate of her

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overall experience.

MS. EISENBERG: In nursing homes where she has worked?

MR. QUINN: In nursing homes
11:23:40 where she has worked.

A How many of them have been Medicaid patients?

(By Mr. Quinn)

11:23:44 Q Right.

A In all facilities with the exception of Normandy Terrace has been at least 90 percent have been Medicaid patients.

Q And how did it differ at Normandy Terrace?

11:24:00 A Of the 293 licensed beds, there were only 30 Medicaid certified beds.

Q Was that a little more upscale facility?

A No. It had to do with the fact that no additional Medicaid beds were being licensed.

11:24:18 Q Okay. That was when a hold was put on Medicaid beds?

A That's correct.

Q Well, how would they get paid at Normandy Terrace when they only had a limited number of
11:24:28 Medicaid beds?

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11:24:28 MS. EISENBERG: Objection, vague.

A Yes, please, clear that up.

Q You said at Normandy Terrace there were
11:24:36 only a certain number. What did you say, 36?

A 30.

Q 30 Medicaid beds. What was the payer status of the other patients?

A Private pay, predominantly. That was one
11:24:46 of the other payer sources.

Q During your period of time working as an administrator in nursing homes in Texas, what percentage of patients or patient days have been paid for by Medicare?

11:25:06 MS. EISENBERG: Objection, Counsel, again, what nursing homes are you talking about; and when you talk about percentage of patients, what are you talking about?

11:25:16 MR. QUINN: The ones where she worked.

A That's too difficult for me to answer because patients turn over so the percentage -- It's not the consistent patient base.

11:25:26 Q Medicare is not - Medicare patients?

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11:25:28 A They roll over. So, it would be hard for me to give you a percentage.

Q And by roll over, they are -- Typically you are talking about people that come out of the
11:25:38 hospital; they are Medicare for the certain period of time - 20 days or 100 days and then they roll over to be a Medicaid patient at some point?

A Or they go home.

Q Or they go home?

11:25:50 A Yes.

Q So, you cannot give us a figure about the number of Medicare paid patient days based upon your own experience in nursing homes in the State of Texas; is that correct?

11:26:04 A I cannot give you a specific number, no.

Q Can you give us a range in terms of percentage?

A If we are using those same number of beds and not talking specifically about numbers of
11:26:20 patients that have been in those beds, I would probably say 25 percent would be Medicare in most of the facilities.

Q 25 percent of the days?

A 25 percent of the total number of
11:26:34 patients - yes, total number of patients on any

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given day.

Q What if we take Normandy out of the equation, do the percentages change?

A No.

Q Okay. It may be because some of these people had dual status?

A Yes.

Q But I asked about Medicaid patients, and you said except for Normandy Terrace it would have been about 90 percent?

A Right.

Q And then Medicare patients - you would say the estimate during the same time period is about 25 percent?

A Well, again, obviously 90 and 25 don't add up to 100; but because there is such a roll-over of patients going from Medicare to Medicaid, back to Medicare, sometimes to private pay, sometimes to home, it's really very difficult. I can't give you an exact number.

Q Okay. But the best number - the best numbers you could give us you've tried to do that?

A I've tried to do that, yes, sir.

Q From April of '86 to May of '89, you were the administrator - it's difficult to read - but is

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11:27:58 it Retama Manor West?

A Retama Manor West.

Q And that was a long-term care facility?

A Yes, sir.

11:28:08 Q And at that time you went through the Medicare certification process?

A That is correct.

Q Is that the first time that facility had been Medicare certified?

11:28:16 A Yes.

Q Can you explain to us what's involved in the Medicare certification process when a home goes through it for the first time?

A There is different policies and procedures
11:28:34 that must be put in place for the facility. There is different staffing that we would be looking at for the facility. There's a number of forms and eligibility requirements that have got to be filled out - that's in regard basically with the
11:28:52 corporation itself and the facility. And, again, lots of education of the staff as far as what is Medicare.

Q Basically in order to become Medicare certified the nursing home has to agree to and does
11:29:08 actually have to meet the Medicare requirements?

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11:29:10 A Certainly.
Q It looks like at some point in time - the next item listed on your resume' shows that at some point in time you were a temporary administrator at
11:29:28 that same facility - that is, Retama Manor West to try to, I guess, improve it?
A Actually it was at Retama Manor North that I was there just on a short term.
Q So, the title is correct but I was reading
11:29:44 in the body and that was actually Retama Manor North?
A Yes. I was explaining why I was only there from April of '87 to October of '87. I left there to take over Retama Manor West - left Retama
11:29:56 Manor North to take over Retama Manor West.
Q Okay. I see.
A There are quite a few facilities that are Retama Manors.
Q And you started out at the Retama Manor
11:30:08 South in Laredo?
A Yes, sir.
Q That was your first job as a licensed administrator?
A Correct.
11:30:18 Q And where did you receive your on-the-job

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11:30:24 training as an administrator before you became licensed?

A At Retama Manor in Edinburg, Texas.

Q Does that have a directional component in
11:30:34 that name?

A No.

Q Do you claim to have any expertise in any areas dealing with fraud or abusive billing practices in the Medicaid reimbursement system in
11:31:08 the State of Texas?

A I am aware of what is considered to be fraud. I don't know that I would call myself an expert.

Q Okay. I think I understand what you are
11:31:20 saying there. You are aware of what the rules and regulations are. That was a poorly phrased question. Let me ask it a different way.

Have you made - have you done any research or participated in any studies to detect fraud or
11:31:44 abuse in the Medicaid reimbursement system in the State of Texas?

A No.

Q I think you have already told us but from your own personal experience, you have never
11:32:06 observed any fraudulent billing practices for

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11:32:08 Medicaid patients in the homes where you have worked?

MS. EISENBERG: Objection, asked and answered.

11:32:12 Q Is that correct?

MS. EISENBERG: You don't have to respond.

MR. QUINN: I'm taking the deposition. I think under our Rules 11:32:22 in the Eastern District of Texas that she is required to answer and you cannot instruct a witness not to answer a question except on the basis of privilege under our plan Rules.

11:32:28 MS. EISENBERG: I hope in the future you won't ask the same identical question twice.

MR. QUINN: I hope so, too.

(By Mr. Quinn)

Q I think you have already -- Can you answer the question?

A Yes.

Q Are you aware of any fraudulent billing
11:32:46 practices that you have seen or observed in the

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11:32:48 nursing homes where you have actually worked in the State of Texas?

A No.

Q Have you ever been suspicious of any
11:33:12 fraudulent Medicaid billing practices in facilities where you have worked?

A No.

Q Can you describe for me your understanding of how Medicaid rates are set?

11:33:24 MS. EISENBERG: Objection, vague.

A Yeah. Can you be a little clearer?

Q How are Medicaid reimbursements -- Can you explain to me how a nursing home is reimbursed by
11:33:38 Medicare for a patient in a facility where you have been the administrator?

MS. EISENBERG: Medicare or Medicaid?

MR. QUINN: I'm sorry, Medicaid.

(By Mr. Quinn)

Q Let me start over. Can you explain to me how Medicaid is being reimbursed for patients in nursing homes where you have been the administrator?

11:33:50 MS. EISENBERG: Medicaid is not

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11:33:52 being reimbursed, Counsel.

Q Can you explain to me how the nursing homes where you have been the administrator have been reimbursed by Medicaid for patients in your 11:34:02 facilities?

A Yes, under a TILE system.

Q Explain to me what that means and how it works.

A The TILE system is comprised of 11 11:34:16 different levels of care starting from a TILE 201. And in general terms, it is a total care patient all the way to 211, which is normally a patient that is needing very little nursing intervention.

Q And how are rates set for those various 11:34:34 patients, if you know?

A Each TILE has a different dollar amount set to it. So, there are 11 different dollar amounts.

Q Do you have any knowledge about how the 11:34:52 reimbursement rates are set in each specific level?

A Based on a 3652 form, which is a form that gives you medical eligibility, you can determine what TILE the patient is going to be under, thereby, knowing what the dollar amount is going to be.

11:35:08 Q Do you know who sets what the

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11:35:14 reimbursement rate will be under each specific TILE - and I don't mean for a specific patient?

A That would be the Texas Department of Human Services.

11:35:22 Q Do you have any knowledge about how the Texas Department of Human Services sets those rates for each specific TILE?

A No. May I ask a question here?

Q Yes, ma'am.

11:35:40 A Did you mean do I know - would I have known how those TILE's would have come to play and how those dollars amounts would have been set?

Q I guess really what I'm asking you is: Do you have an understanding of how the State of Texas

11:36:00 determines the reimbursement rate in each TILE level? How do they set a rate?

A It's based on criteria that each TILE has. If the patient meets that particular criteria, then that TILE would be significant for that dollar

11:36:16 amount. I'm not aware of how the methodology came into place, but I know how it works now.

Q And here's really -- I've asked those questions in one way. Assume with me that a TILE 11 patient gets $48.02 a day.

A Okay.

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11:36:34 Q Do you know how the State of Texas comes up with the figure of $48.02?

A No, sir, I do not.

Q Are there currently community-based 11:37:06 alternatives for Medicaid patients in the State of Texas?

A Yes.

Q Do you have -- This is kind of vague, but I'm going to ask it that way first. Do you have 11:37:20 very much knowledge in that area of community-based alternatives?

A No, I do not have very much knowledge.

Q It seems like I noticed reading on your C.V. somewhere that at some point in time you have 11:37:38 helped establish an HMO, or what was that?

A I helped establish an in-house hospice program.

Q A home health agency?

A And home health agency. But that was 11:37:50 actually within my own facility.

Q Okay. Why did you develop a home health agency within your own facility?

A We had many patients that were being discharged that we felt that we could continue to 11:38:08 care for them in their own home environment.

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Q So, the services that were provided were not actually provided in the nursing home. They were to former patients of the nursing home?
A That's correct.
Q And I guess others too if they would call you?
A Yes.
Q You indicate that you negotiated and implemented an in-house hospice program. Explain what that is to me.
A That was just hospice-type patients that were in the facility.
Q What do you mean by hospice-type patients?
A A hospice patient is a patient that death is imminent within six months.
Q Maybe somebody with terminal lung cancer or something like that?
A It could be. Again, death must be imminent within six months.
Q You indicated that you also negotiated and managed eight managed care contracts. What was involved in that?
A Predominantly the services that would be rendered for the different patients coming in as well as rate setting for those services.

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Q Was this one of these new pilot programs they are trying to implement for Medicaid patients to be involved in managed care?
A No, sir. This had to do specifically with the Medicare replacement HMO.
Q Do you know how Texas ranks in relation to the rest of the States on utilizing community-based alternatives?
A No, I do not.
Q What type of community-based alternatives or programs are you familiar with?
A There's home health. I'm aware of what is called a group home where anyone, in fact, can provide services to patients as long as there are six beds or less, six patients or less.
I'm aware of assisted living facilities. Well, I should take that back because that is not Medicaid. Those is typically private paying status.
That's really all the ones that I'm aware of.
Q Have you done any research or read any articles on the percentage of smokers or former smokers who use nursing home facilities?
A I believe I read one article and that's

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11:41:16 been provided to you that lists some sort of percentage with smokers in nursing homes or past smokers that are now in nursing homes.

Q Do you have any opinion or recollection about what percentage of smokers and former smokers have been in the facilities that you have actually managed?

11:41:34

MS. EISENBERG: Could I have the question?

MR. QUINN: I'll attempt to restate it.

11:41:44

(By Mr. Quinn)

Q Do you have any knowledge about what the percentage of smokers and former smokers were in the facilities that you managed?

11:41:58

A No. I do not.

Q Do you know what percentage of the Medicaid population in Texas is composed of smokers and former smokers and nonsmokers?

11:42:18

A No, I do not.

Q In the nursing homes where you have been the administrator, have there been patients with the diagnosis of COPD?

A Yes.

11:42:38

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11:42:40 Q And in the nursing homes where you have been the administrator, have there been patients with the diagnosis of emphysema?

A Yes.

11:42:50 Q In the patients where you have been the administrator, have there been patients that have a diagnosis that contains cardiovascular disease?

MS. EISENBERG: I believe you misstated, Counsel.

11:43:02 Q In the patients where you have been the administrator, have there been ---

MS. EISENBERG: Counsel, you are saying "in the patients where you have been administrator" ---

11:43:08 Q I'm sorry. It was a long weekend. In the nursing homes where you have been the administrator, have there been patients with the diagnosis of cardiovascular disease?

A Yes.

11:43:18 Q In the nursing homes where you have been the administrator, have there been patients admitted with the diagnosis of lung cancer?

A Yes.

Q In the nursing homes where you have been

11:43:32 the administrator, have there been patients admitted

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11:43:38 with the diagnosis of oral or mouth cancer?
A Yes.
Q In the cases where -- I'm sorry. In the nursing homes where you have been the administrator,
11:43:48 have patients been admitted with the diagnosis of chronic bronchitis?
A Yes.
Q In the nursing homes where you have been the administrator, have patients been admitted with
11:44:04 the diagnosis of arteriosclerosis?
A Yes.
Q In the nursing homes where you have been the administrator, have there been patients admitted with - that have as one of their diagnoses
11:44:24 non-Alzheimer's dementia - non-Alzheimer's dementia?
A Non-Alzheimer's dementia, yes.
Q In the nursing home where you are currently the administrator, are the patients allowed to smoke?
11:44:40 A Yes, they are. Excuse me.
Q Bless you. Do you need some water?
A No, I'm fine. Thank you.
Yes, they are allowed to smoke.
Q Is there a separate area for the smokers?
11:44:52 A As far as where they reside?

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11:44:56 Q No. As far as where they are allowed to smoke.

A Yes.

Q I take it they are not allowed to keep the
11:45:02 smoking material in their room?

A That is correct.

Q In the nursing homes where you have been the administrator, have there been patients who have had a diagnosis of bladder cancer?

11:45:18 A Bladder cancer, not that I recall.

Q In the nursing homes where you have been the administrator, have there been patients who have had the diagnosis of strokes?

A Yes.

11:45:46 Q Does Medicaid reimburse the nursing home for hospice care?

A Yes, they do.

Q And is the nursing skill level required for hospice care higher than that of an average
11:46:04 patient?

MS. EISENBERG: By nursing skill you mean ---

Q That's a vague question. Yeah, that's a bad question.

11:46:10 Normally do the patients that require

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11:46:18 hospice care need an LVN or an RN to provide at least some of their care?
A Yes.
Q Have you done any research or reading
11:46:36 about the dangers of cigarette smoking?
A I have read articles.
Q In relationship to this case or just in your general reading over the years?
A In general reading over the years.
11:46:50 Q One of your opinions at least seems to indicate that there's not a lot of smoking-related problems in the nursing home population, and I'll get to that in just a minute. That's the reason I am going to ask some of these other questions is to
11:47:10 kind of test your basis for that.
Do you claim to have any expertise in determining what type of physical problems are caused by tobacco use?
A No.
11:47:32 Q Have you done any research or do you claim to have any expertise in determining what disease or problems are related specifically to smoking?
A No, I have no expertise in that.
Q Have you done any research in that area
11:48:00 for the opinions you are going to give here today -

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11:48:04 that is, in what problems are related to smoking?

A My opinions are based on the types of patients that have been in my facilities where I have been the administrator.

11:48:16 Q Okay. Have you read any of the Surgeon General's reports on smoking?

A Official reports, no.

Q Do you consider yourself to be an expert in any medical field?

11:48:30 A No.

Q When your mother quit smoking, did she have to use any gimmicks such as gum or hypnotism or anything like that; or did she just quit?

A She tells me she just quit.

11:48:48 Q Had she tried to quit before?

A I think she had, yes.

Q Do you know how many times?

A No, I don't.

Q Based upon your experience working in
11:49:04 nursing homes, do you have an opinion as to whether or not smoking contributed to increased Medicare health costs in nursing homes?

MS. EISENBERG: Medicare or Medicaid, Counsel?

11:49:20 Q Medicaid, I'm sorry.

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11:49:22 A Would you please restate.
Q Yes. Based upon your experience in working in nursing homes as an administrator, do you have an opinion as to whether smoking has been a
11:49:36 cause of increased medical expenses for residents in your nursing homes that would have been reimbursed by Medicaid?
A No.
Q You don't believe that there have been
11:49:42 any?
A I don't believe there have been increased costs due to smoking for a Medicaid patient.
Q Well, have Medicaid patients in your nursing homes been treated for smoking-related
11:49:56 diseases; or do you know?
A Yes. I'm aware of the different diagnoses that are in there. There is not - I do not recall a single patient ever in my facilities that were in my facilities specifically for a smoking-related
11:50:08 disease.
Q If a patient - if a smoker or former smoker is in your facility, does the fact that they have a smoking-related disease increase their cost of care in certain situations?
11:50:24 A No.

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11:50:26 MS. EISENBERG: Objection,
Counsel, vague and assumes fact not
in evidence.

Q And your answer was "no"?

11:50:32 A My answer was no.

Q Once somebody is admitted to a nursing
home, would you agree that the cost of care with
other factors being equal is normally greater for a
current or former smoker than a nonsmoker?

11:51:04 MS. EISENBERG: When you say
"someone" you're not restricting this
to Medicaid, I take it?

MR. QUINN: I'm just talking
about the population in general.

11:51:12 A No.

(By Mr. Quinn)

Q Based upon your experience in the nursing
homes where you have been the administrator, can you
11:51:30 tell us what percentage of the Medicaid population
had cardiovascular disease?

MS. EISENBERG: And when you say
"had," what do you mean, Counsel?

MR. QUINN: That they had
11:51:42 cardiovascular disease as one of

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their diagnoses.

A It would be a large percentage, but I couldn't give you a number.

(By Mr. Quinn)

Q Would large be more than 50 percent or less than 50 percent?

A Probably more than 50 percent.

Q Based upon your experience working in the nursing homes, what percentage of the Medicaid population would have COPD as one of their medical diagnoses?

A Less than 50 percent.

Q But greater than what percent?

MS. EISENBERG: And you are talking Medicaid now?

MR. QUINN: Medicaid population.

A There's -- I couldn't give you a percentage.

(By Mr. Quinn)

Q More than 25 percent - more than one in four?

A With COPD more than one in four or more

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11:52:50 than 25 -- I would say probably more than 25 percent.

Q Okay. Do you know how many of the patients with COPD were smokers or former smokers?

11:53:02 MS. EISENBERG: Are we talking now Medicaid, Counsel?

Q In the Medicaid population.

A Not always.

Q Do you have a breakdown in percentage?

11:53:10 A No, I don't.

Q Is it your testimony that in the Medicaid population that the treatment and services given to those in the Medicaid population in your nursing homes, that the costs were essentially the same for

11:53:54 smokers versus nonsmokers?

A The reimbursement is based on ADL's, not on diagnosis.

Q Did you have smokers and former smokers in your facilities that needed oxygen?

11:54:10 A Yes.

Q Did you have smokers and former smokers in your facilities that needed breathing treatments?

A Yes.

Q Did you have smokers and former smokers in

11:54:28 your facility that were short of breath?

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11:54:28 A Yes.
Q Did you have smokers and former smokers in your facilities that required nebulizers that would be administered by a nurse of some type or a
11:54:48 respiratory therapist?
A Yes.
Q Did you have patients in your nursing homes in the Medicaid population that required respirators?
11:54:56 A No.
Q Did you have smokers and former smokers in the Medicaid population in your nursing homes that required oral suctioning due to excessive mucus?
A Yes.
11:55:18 Q Did you have smokers and former smokers in the Medicaid population in your nursing homes that required medication for coughing?
A Yes.
Q Did you have smokers and former smokers in
11:55:38 your facilities in the Medicaid population that had breathing problems that needed their beds elevated to make it easier to breath?
A Yes.
Q Did you have patients in your facilities
11:55:58 in the Medicaid population who would have

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11:56:04 chemotherapy administered by a nurse according to the physician's orders?

A No.

Q In the nursing homes where you have been,

11:56:16 have there ever been patients that received chemotherapy to your knowledge?

A Yes.

Q You are just saying they would not be in the Medicaid population?

11:56:26 A Correct.

Q In the admission histories that are taken of the patients that come into the nursing homes, is there usually a question about smoking history?

A No, not specifically about smoking

11:56:46 history.

Q Would that just be in the first medical assessment or is that part of an initial medical assessment of patients in nursing homes in your opinion?

11:56:58 MS. EISENBERG: Objection, vague.

A Can you rephrase that?

Q Do you know whether medical assessments -- Let me back up.

11:57:04 In your experience in the nursing homes

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:57:08 where you have worked, does the medical assessment normally ask about smoking history, if you know?

A No, it does not.

Q Do you know whether the initial nursing 11:57:26 assessment normally asks about smoking history?

A No, it does not.

Q In this case are you going to express any opinions about what diseases are or are not smoking related?

11:57:40 A No, I'm not.

MS. EISENBERG: Counsel, do you have a time table as for lunch?

MR. QUINN: I'm at your - whatever is convenient for you and 11:58:16 the witness. If you-all want to go now, it is almost 12:00 noon; or if we want to go until 1:00 and then break, it doesn't matter to me.

MS. EISENBERG: Can we go off the record?

MR. QUINN: Yeah, let's go off the record.

THE VIDEOGRAPHER: We are going off the record. It's 58 minutes 11:58:30 after 11:00 o'clock. This is the end

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

11:58:30 of Tape No. 1.

(A LUNCH RECESS WAS TAKEN.)

12:54:16 VIDEO OPERATOR: It's 53 minutes after 1:00 o'clock. This is the beginning of Tape No. 2; and we are back on the record.

(By Mr. Quinn)
Q Let me hand you what's been marked as Exhibit No. 1 to your deposition. It's the third amended notice of oral and video deposition.
I'm going to direct your attention to 12:54:56 Exhibit A, the last two pages. I understand that you didn't bring any documents, but I'm just going to go starting with little letter "a" and see if any such documents exist that are responsive to this request.
12:55:14 MS. EISENBERG: Counsel, do you have a copy for us?
MR. QUINN: I'm not sure. Here's a copy.
MS. EISENBERG: Thank you.

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(By Mr. Quinn)

Q Little letter "a" talks about: "Any and all documents relating to any fee, retainer or engagement agreement you have with Defendants or Defendants' counsel."

I think you've told us so far that you do have a time sheet somewhere that may have some notations on it. Are there any other documents that would be responsive to that request?

A No.

Q Little "b": "Any and all documents which you have received from Defendants, Defendants' counsel or any employee, agent or representative of Defendants in this case."

Other than some of the reports or articles that have been furnished to me that we will get to in a minute, have you received anything else from any of the people listed in "b"?

A Just those documents that my assistant gave to me which are not part of what you've got.

Q Okay. And those currently are in the trunk of your car?

A Yes, sir.

Q I ask that you maintain those separately and not destroy those.

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Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

12:56:50 A Okay.

MS. EISENBERG: Counsel, I think your question assumed that all documents which Ms. Paolini received

12:57:00 from defendants were, in fact, provided as part of the documents relied on in connection with this deposition; and that assumes facts not in evidence.

12:57:12 So, I move to interject that objection.

Q Okay. Have you received any other documents from the defendants other than those produced in response to the discovery order and

12:57:32 other than those which you have talked about?

A Other than those that I've talked about, no.

Q Letter "c" asks for: "Any and all documents which form the basis, or which you

12:57:50 considered in forming the basis, in whole or in part, for any opinions you may render in this case or upon which you may rely in rendering any opinions in this case."

Can you think of any such documents that

12:58:08 were not produced in response to a court order?

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12:58:08 A No.

Q Will you look at sub letter "d": "Any and all documents which you have reviewed in preparation for this deposition, whether or not said documents
12:58:24 form the basis of any opinions you may render in this case."

Are there any other documents responsive to "d"?

MS. EISENBERG: Any other than
12:58:32 what, Counsel?

MR. QUINN: Other than what's been produced or that she's discussed.

A No.

(By Mr. Quinn)

Q Would you look at letter "e" and tell me what sort of documents exist that would be responsive to that request?

12:58:54 A (Witness complies) The documents that I have that are in the trunk of my car are documents that were not relevant to supply for this case.

Q And those would be the articles obtained by your assistant?

12:59:12 A There were also articles that were sent to

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Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

12:59:16 me by counsel that are not part of what you've got.

Q Okay. So, the attorneys for the tobacco companies sent you some documents that you feel were not relevant to form your opinions?

12:59:24 A That's correct.

Q Would you look at sub letter "f" and tell me if there are any other documents responsive to that other than those that we have already discussed today?

12:59:42 A No.

Q Would you look at sub letter "g" - the same question?

A Uh-huh. Other than the one handwritten note that reflects pages, that would be all - page

12:59:58 numbers, I should say.

Q Okay. Would you look at sub letter "h" and answer the same question, please.

A There was an original - an original summary that we had put together that is now

01:00:28 different, the original.

Q And I think that's Exhibit 3 here. I don't know if that's the same form or the same type writing.

A No. That was on my list of opinions.

01:00:40 Remember there was just some different wording that

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01:00:42 was used.
Q There was a prior draft of your report?
A Yes, yes. That would be the only thing.
Q And does that still exist, or do you know?
01:00:52 A I believe I have that also with all of my other paperwork.
Q So, were there two drafts of the report or more?
A There was just the one other.
01:01:12 Q Item "i" if would you please review that, that basically inquires into articles and stuff you have relied on. I think you have already provided all that or counsel has.
A Yes.
01:01:26 Q "j" I think what you have has already been provided; is that correct - to the best of your knowledge?
A To the best of my knowledge, yes.
Q Number "k" deals with the time sheets, and
01:01:40 you've told us what you have there is -- Do you recall about how many pages your time sheet is on this case?
A Just one.
Q Okay. Number "l" asks about audio or
01:01:54 videotape recordings of any meetings, and I assume

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01:01:58 that none of those meetings were recorded to your knowledge?

A No.

Q And you have not been shown any sort of
01:02:02 videotapes or anything like that?

A No.

Q "m" seems to also inquire about bills and financial affairs, and I think we have discussed that. And you have got the one-page billing records
01:02:20 is all you have, correct?

A That's correct.

Q "n" I have already asked you about. You had none of those?

A No.

01:02:30 Q And "o" you have no list of the two depositions you have given?

A No.

Q And you have given no trial testimony.
Had you seen a copy of the items requested
01:02:44 with this deposition before today?

A No, sir.

(PAOLINI EXHIBIT NO. 3, A REPORT ENTITLED "DEBORAH PAOLINI", WAS MARKED FOR IDENTIFICATION. SAME WILL

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

BE FOUND AT THE CONCLUSION OF THIS DEPOSITION.)

(By Mr. Quinn)
01:02:48 Q Let me show you what's been marked as Exhibit No. 3 and ask if you can identify that?
MS. EISENBERG: Can we have a copy, Counsel?
MR. QUINN: I think it's just
01:03:26 the initial disclosure that was made about her testimony in this case, and I evidently didn't make another copy.
We can see if they can make one
01:03:34 here for us, if you want.
A This is the first time I've seen this.

(By Mr. Quinn)
Q Okay. Would you go ahead and review --
01:04:18 Did you have the opportunity to review Exhibit No. 3?
A (Reviewing) Okay.
Q Do you recall when this was that you first told any of the lawyers with the tobacco industry
01:05:14 about your opinions that are expressed in Exhibit

51710 5881

http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:05:14 No. 3?

A I believe most of what's contained in this document was told at the very first meeting that I had.

01:05:30 Q Okay. That would have been in October?

A In October.

Q Of '96?

A Yes.

(PAOLINI EXHIBIT NO. 4, LIST OF OPINIONS OF DEBORAH L. PAOLINI PURSUANT TO CMO PARAGRAPH 7(b)(1), WAS MARKED FOR IDENTIFICATION. SAME WILL BE FOUND AT THE CONCLUSION OF THIS DEPOSITION.)

(By Mr. Quinn)

Q And let me hand you what's been marked as Exhibit No. 4. And that is titled, "List of

01:05:50 Opinions of Deborah L. Paolini Pursuant to CMO Paragraph 7 (b)(1)."

A Yes.

Q I believe you testified that this document was actually prepared by the lawyers for the tobacco

01:06:04 industry?

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:06:06 A Correct.

Q And then I guess it was submitted - the first draft at least was submitted to you and you had some changes to make?

01:06:14 A Yes.

Q And then what you have in front of you as Exhibit No. 4 is the final draft of your opinions?

A Yes.

Q Why don't we go through. I'm going to ask 01:06:28 some questions, and I'm going to just try and go in order.

A Okay.

Q I figure that's the easiest way to do it. So, I'm going to ask you some questions about 01:06:48 Opinion No. 1, is what I will call it. Is that fair terminology?

A Yes, it is.

Q You state that: "Nursing homes in Texas, as in the United States, provide long term care 01:07:08 primarily to the frail and elderly. More than 90 percent of nursing home residents in Texas are over 65; over 60 percent are 81 years or older."

What is the basis for your statements in Opinion No. 1?

01:07:28 A This was based on those nursing homes

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:07:30 where I have been the administrator at. These percentages were accurate as well as supported in the documents that are available to you.

Q What's the relevance of the age grouping

01:07:44 here that you selected?

MS. EISENBERG: Objection, Counsel.

Q In forming your opinions, was there any reason you classified people as being over 65 or

01:07:56 over 81 years of age?

A No specific reason, just factual.

Q I mean, why did you pick those ages to give breakdowns?

A Again, just based on what I had currently

01:08:10 as an administrator - what I had seen in my nursing homes.

Q Are these age breakdowns similar to the ages of nursing home residents in other states?

A Based on the documentation and the

01:08:22 information that you have, yes.

Q How does the State of Texas nursing home population differ from the population in other states?

MS. EISENBERG: Objection,

01:08:34 overbroad, vague.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:08:44 A I really can't answer that.

Q Opinion No. 2, you state that: "Nursing home residents fall into two distinct groups: The short-stay and the long-stay residents. Many
01:09:02 studies have confirmed this to be the case. One of the leading studies finds that short-stay residents have an average length of stay of 1.8 months while long-stay residents have an average length of stay of 2.5 years."

01:09:26 You use the phrase "many studies." Can you tell me what studies you were relying upon when you used the phrase "many studies"?

A Specifically, no; but, again, they are all contained in the documents which have been provided
01:09:38 to you.

Q You state that one of the leading studies finds that short-stay residents have an average length of stay, et cetera . . .

A Yes.

01:09:52 Q Which article did you consider to be one of the leading studies since you use those words?

A That would be a color -- I'm sorry. The name escapes me right at this moment.

MS. EISENBERG: Counsel, if you
01:10:12 would give her the document, I'm sure

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:10:16 she could go through it and find it.

Q On what population was the average length of stay for short-stay and long-stay residents determined?

01:10:28 MS. EISENBERG: In what, Counsel?

MR. QUINN: In opinion No. 2.

(By Mr. Quinn)

01:10:34 Q I mean, what population? Is that Texas patients, nationally? What is that?

MS. EISENBERG: You mean in the article that she cites?

MR. QUINN: In her opinion.

01:10:42 She's wrote the opinion.

MS. EISENBERG: Well, the opinion says that a study found that. So, you are asking what sample was surveyed in that article?

(By Mr. Quinn)

Q Other than what is in the article, do you have any information about the average length of stay of short-stay and long-stay residents in the

01:11:06 Texas Medicaid population?

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:11:10 A Yes. What was in my own nursing homes where I was the administrator.

Q And what was your experience in that regard?

01:11:18 A That usually those residents that were on Medicare were considered to be short-stay residents; and those residents that were being funded by Medicaid were those residents that had an average length of stay of 2.5 years or longer.

01:11:38 Q What percentage of the Medicare - Medicare patients in your experience at your nursing homes would then turn - eventually turn into Medicaid patients or long-stay residents?

A In all facilities where I have been the
01:12:00 administrator, with the exception of Normandy Terrace, the large - over 50 percent would turn into Medicaid patients after Medicare.

Q Are you aware of any Texas-specific data that you reviewed or that you have been provided
01:12:20 that indicates the average length of stays?

MS. EISENBERG: I'm sorry. Could you repeat the question?

MR. QUINN: I asked if she was aware of any Texas-specific data that
01:12:38 she's reviewed or been provided that

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:12:42 indicates the average length of stays.

MS. EISENBERG: And I'm sorry to be so intrusive; but are you

01:12:50 excluding from that the documentation that has been provided which does indeed include that? Your question wasn't clear that way.

MR. QUINN: Okay. Your

01:13:00 objection is on the record.

(By Mr. Quinn)

Q You may answer.

A I believe that the HRO report - which I am

01:13:14 calling HRO - House -- I'm sorry.

Q The one I was provided this morning?

A There you go. Yes, the House Research Organization. That may have Texas-specific lengths of stay.

01:13:26 Q Is the House Research Organization article that I was provided today - is that something that you retrieved from a source or your nurse retrieved from a source?

A No.

01:13:38 Q How did you come in custody of the House

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:13:44 Research Organization Special Legislative Report?

A I believe - I'm not sure - that that came from Tom Seuhs.

Q When did you first receive that?

01:13:56 A Approximately two to three weeks go.

Q Well, would that have been at the Houston meeting or shortly after the Houston meeting?

A I believe it was after the Houston meeting.

01:14:14 Q And would that be in response to the phone call you made to him - he sent this to you?

A Yes, that is correct.

Q Do you know whether average length of stays vary by state?

01:14:34 A I would not know that positively, but I would imagine so.

Q Do demographics of a state impact the variable of average length of stay?

A In my own specific experience it has.

01:14:52 Q Would the various states specific program definition also impact upon the length of stay variable?

MS. EISENBERG: Objection, no foundation, incomplete hypothetical,

01:15:08 calls for speculation.

51710 5889

01:15:08
Q You can answer.
A I really don't know how to answer. I'm sorry.
Q In Texas the Medicaid program has certain
01:15:24
definitions and requirements?
A Yes.
Q If those definitions and requirements are different in other states, would that factor impact upon the length of stay variable in other states?
01:15:38
MS. EISENBERG: Same objection.
A I couldn't answer that. I cannot answer that.
Q Can you tell us what the statistics show about the number of Texas nursing home residents
01:16:04
which are short-stay patients versus long-stay patients?
MS. EISENBERG: Do you want me to help her, or do you want her to spend the time? Whatever you prefer.
01:17:06
MR. QUINN: I would like her to do it. She's the witness.
MS. EISENBERG: Okay.
A Okay. Can you repeat the question again?
MR. QUINN: Could you read it
01:17:22
back, please.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

THE REPORTER: "Can you tell us what the statistics show about the number of Texas nursing home residents which are short-stay patients versus long-stay patients?"

A Short stay versus long stay.

MS. EISENBERG: Take as much time as you want.

THE WITNESS: Yeah. I intend to.

My notes would have told me exactly where to go.

MS. EISENBERG: Cris, I can just give her the pages. I mean, it's not a secret. She, in fact, told me the pages. It would take a lot of time.

THE WITNESS: It's not a secret.

MS. EISENBERG: Otherwise we are going to have to sit here for 15 minutes.

MR. QUINN: Well, I just want to test her expertise in this area to see whether she knows things or if she is just digging things out of reports that have been provided to

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:18:46 her.

I would like her to do it.

MS. EISENBERG: Well, can we go off the record for a minute?

01:18:56 MR. QUINN: I'm satisfied to have her keep looking.

MS. EISENBERG: Could I request to go off the record for a minute?

MR. QUINN: As soon as she 01:19:04 answers the question.

MS. EISENBERG: I'm going to request that we take a break at this moment and then take the witness outside of the room and talk to 01:19:28 Mr. Quinn.

Is that all right?

MR. QUINN: Again, I would like the question answered and then I am willing to take a break.

01:19:44 She's tendered as an expert in this area and she has written a report on it - or at least the lawyers have written a report on it - and I feel like I'm entitled to ask 01:19:54 questions about it.

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http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:19:56 MS. EISENBERG: Of course. But the issue here is, Cris, you are asking her to find in 18 pages one very short clause. She has notes. 01:20:04 She has done it. She told me which pages the data is on, but for her to read under stress all 18 pages to find that clause is asking a lot, I think.

01:20:14 MR. QUINN: Well, I'm surprised she didn't bring her notes with her today; but I guess that's her choice or your choice, one of the two.

MS. EISENBERG: It does not 01:20:28 impact in any way on her expertise.

MR. QUINN: Well, the jury can make their own assessment of that from the videotape they are viewing.

A Okay. Page 18 talks about Medicare 01:20:56 residents also tend to have shorter stays in nursing homes. There was an actual table though, and I'm not ---

MS. EISENBERG: I think you should finish the rest of that 01:21:12 sentence that you were reading.

51710 5893

http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

THE WITNESS: Well, I was going to go to it.

A Okay. 25 ---

MR. QUINN: I'm sorry. For the record I need to object to the counsel's coaching in violation of the Eastern District of Texas plan and Rules with respect to depositions.

(By Mr. Quinn)

Q I'm sorry. You may answer.

A I started the sentence out, "Page 18." I thought you were going to refer to it and read that.

Q I think I gave you my copy.

A Let me just go ahead and read it then.

"Medicare residents tend to have more medical and nursing needs than the general nursing home population and fewer cognitive, behavioral, and skill problems. Medicare residents also tend to have shorter stays in nursing homes. 25.1 days is the national average length of stay and greater response to rehabilitation measures."

Q Do you have any other response to that question?

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Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

01:22:12 A No, I do not.
Q Why don't we briefly go through these studies.

MR. QUINN: Did you want to take
01:22:18 a break?

MS. EISENBERG: Yes, I think so.

THE VIDEOGRAPHER: We are going off the record. It's 22 minutes after 1:00 o'clock.

01:24:04

(A BRIEF RECESS WAS TAKEN.)

THE VIDEOGRAPHER: It's 26 minutes after 1:00 o'clock, and we
01:27:14 are back on the record.

MR. QUINN: I believe the witness has requested that we adjourn the deposition now and let her reconvene at a later date when she
01:27:30 has been taking her heart medication, and I am agreeable to doing that.

And as I have said previously off the record, any time she wanted to do that I am willing to do that;
01:27:38 and I agreed with that.

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Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

So, do you-all want to put anything else on the record?

MS. EISENBERG: No. We appreciate your consideration on that, and we will look forward to negotiating a continuation date.

MR. QUINN: Okay.

MS. EISENBERG: Very good.

THE VIDEOGRAPHER: We are going off the record. It's 27 minutes after 1:00 o'clock. This is the end of Tape No. 2.

(WHEREUPON THE DEPOSITION WAS ADJOURNED.)

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Source: https://www.industrydocuments.ucsf.edu/docs/stgl0001

THE STATE OF__________:

COUNTY OF_____________:

I, DEBORAH PAOLINI, hereby certify that I have read the foregoing transcript of my testimony given in the foregoing numbered and styled case, and that same is true and correct to the best of my knowledge and belief.

I further certify that any and all corrections have been made on a separate page and initialed by me.

This________ day of_______________, 1997.

____
DEBORAH PAOLINI

SWORN TO AND SUBSCRIBED BEFORE ME this __________ day of_____________________, 1997.

____
NOTARY PUBLIC

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THE STATE OF TEXAS:

COUNTY OF JEFFERSON:

I, STARLA FOUST, a Certified Shorthand Reporter, hereby certify that the foregoing testimony was given before me after the Witness had been first duly sworn.

I further certify that this deposition was typed under my direction and is a complete and correct transcript of the proceedings; and that it is being filed with the Court in accordance with the Stipulation of Counsel contained in this deposition.

I further certify that I am neither attorney for, related to nor employed by any of the parties to the lawsuit in which this deposition was taken. Further, I am neither related to nor employed by any attorney of record in this cause; nor do I have a financial interest in the matter.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 31st day of July, 1997.

Starla Foust

STARLA LEE FOUST, CSR
Certification No. 5946
Expiration Date: 12/31/97
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(409) 839-4407

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DEPOSITION STIPULATIONS

NO. 5:96CV91 Deposition of: DEBORAH PAOLINI

Please complete this Stipulation or state your agreed Stipulations on the record.

The Attorneys for all parties present stipulate and agree to the checked items as follows:

1. Deposition is being videoed. Yes X No___
   Video Operator: LOU GETZ

2. Deposition is taken pursuant to:
   ______ a. Texas Rules of Civil Procedure
   X_____ b. Federal Rules of Civil Procedure
   X_____ c. Notice
   X_____ d. Subpoena
   ______ e. Agreement
   ______ f. Court Order

3. Objections:
   ______ a. Reserve all objections, except as to form and responsiveness
   ______ b. Reserve all objections to time of trial
   ______ c. Make all objections at the time of deposition
   ______ d. An objection by one defendant shall be considered an objection by all defendants

4. Signature:
   ______ a. Signature of Witness is waived
   X_____ b. Witness to read and sign deposition
   X_____ c. If deposition not signed by time of trial, unsigned copy may be used as though signed and timely filed

5. Custodial Attorney:
   The deposition original will be sent to MR. CRIS QUINN for safekeeping and use at the time of trial.

6. Foreign jurisdiction:
   Reporter may swear the Witness in a foreign jurisdiction. Yes____ No____

7. Original deposition cost:
   Shall be paid by the Attorney asking the first question.

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Look-See Concordance Report

UNIQUE WORDS: 1,571
TOTAL OCCURRENCES: 5,754
NOISE WORDS: 384
TOTAL WORDS IN FILE: 16,359

SINGLE FILE CONCORDANCE

CASE SENSITIVE

INCLUDES ALL TEXT OCCURRENCES

DATES ON

INCLUDES PURE NUMBERS

POSSESSIVE FORMS ON

- DATES -

12/31/97 [1]
112:23
April [7]
54:25; 55:20; 57:10; 58:12, 15; 64:24; 66:13
April of 1994 [2]
58:10, 12
August [1]
9:23
July [2]
58:25; 59:10
July, 1997 [1]
6:22
July 28, 1997 [2]
1:20; 4:4
June the 10th [1]
10:15
May [7]
54:1, 25; 55:21; 58:15; 59:10; 64:24
October [6]
28:24; 57:10; 59:1; 66:13; 96:5, 6
October, 1996 [1]
39:24
October 14, 1992 [1]
6:11
October of 1996 [1]
30:16

- $ -

$150 [1]
29:25
$48.02 [2]
71:24; 72:2

- 1 -

1 [13]
4:7, 11; 5:1; 6:19; 49:7, 10; 88:1, 12; 96:12, 21; 97:15, 24; 113:5
1.8 [1]
99:7
100 [2]
63:6; 64:16
10415883 [1]
11:1
10:00 [2]
6:22; 47:4
10th [1]
10:15
11 [3]
70:9, 17; 71:23
11:00 [2]
47:9; 87:25
12/31/97 [1]
112:23
120 [1]
57:6
120-bed [1]
57:2
12:00 [1]
87:16
14 [1]
6:11
15 [2]
12:22; 105:19
150 [1]
51:25
18 [6]
6:20; 9:12; 107:3, 7, 19; 108:13
1974 [1]
10:22
1975 [1]
9:5
1981 [2]
18:3; 19:2
1983 [2]
19:12; 20:5
1985 [1]
9:5
1992 [1]
6:11
1994 [2]
58:10, 13
1996 [2]
30:17; 39:24
1997 [6]
1:20; 4:4; 6:22; 111:13, 20; 112:19
1:00 [5]
87:17; 88:6; 109:9, 14; 110:11

- 2 -

2 [9]
4:8; 48:13, 21; 49:1; 88:7; 99:2; 100:7; 110:12; 113:7
2.5 [2]
99:9; 101:9
20 [1]
63:6
200-hour [2]
17:1; 18:11
2001 [1]
2:17
201 [1]
70:10
21 [1]
9:12
211 [1]
70:12
22 [1]
109:8
2300 [1]
2:17
235 [2]
2:24; 112:24
25 [9]
63:21; 23, 24; 64:13, 15; 83:23; 84:1; 108:3
25.1 [1]
108:21
26 [2]
57:7; 109:13
26-bed [1]
57:3
27 [1]
110:10
28 [2]
1:20; 4:4
28130192405 [1]
5:24
28130192477 [1]
5:25
28150TH001062 [1]
6:12
28150TH001144 [1]
6:13
28th [1]
6:22
293 [2]
52:3; 61:15

- 3 -

3 [7]
4:9; 92:21; 94:23; 95:6, 21; 96:1; 113:11
30 [3]
61:16; 62:6, 7
355 [1]
2:10
36 [1]
62:5
3652 [1]
70:21

- 4 -

4 [5]
4:10; 96:10, 19; 97:7; 113:16
400 [1]
3:3
409 [1]
112:25
451-04-9737 [1]
10:24
48 [1]
4:8

- 5 -

5 [3]
4:7; 60:12; 113:21
50 [5]
83:6, 7, 8, 13; 101:16
53 [2]
47:3; 88:5
550 [1]
3:3
58 [1]
87:24
5946 [1]
112:22
5:96CV91 [2]
1:4; 113:2

- 6 -

6 [1]
113:23
60 [1]
97:22
65 [2]
97:22; 98:9
68 [1]
58:3
6922 [1]
8:8

- 7 -

7 [4]
4:11; 96:12, 21; 113:24
701 [1]
1:24
72 [1]
59:14
74 [1]
17:17
75 [2]
55:22; 56:17
75201 [1]
2:18
7602 [1]
10:9
77007 [1]
3:3
77701 [1]
2:5
77701-2399 [2]
2:25; 112:25

- 8 -

801 [1]
2:4
81 [2]
97:22; 98:10
839-4407 [1]
112:25
86 [1]
64:24
87 [3]
9:23; 66:13
89 [2]
59:10; 64:24

- 9 -

90 [4]
61:12; 64:10, 15; 97:20
90071 [1]
2:11
91 [2]
58:25; 59:10
93 [2]
57:10; 59:1
94 [6]
4:9; 54:25; 55:20; 57:10; 58:11, 15
95 [4]
54:1; 55:1, 21; 58:15
96 [3]
4:11; 28:24; 96:7
97 [1]
54:1
98 [1]
59:14

- A -

able [9]
37:13; 54:11; 55:23; 56:7, 10, 23; 58:19; 59:19, 20
above-styled [1]
1:21
Absolutely [1]
43:6
abuse [1]
67:20
abusive [1]
67:8
accordance [1]
112:10
according [1]
86:1
accounting [1]
56:3
accurate [2]
49:2; 98:2
accurately [1]
56:4
actual [1]
107:21
acuity [3]
59:19, 22; 60:6
add [1]
64:15
additional [3]
17:3; 55:23; 61:19
address [4]
8:7, 9; 10:7; 51:22
adjourn [1]
109:17
ADJOURNED [1]
110:16
ADL's [2]
58:6; 84:16
administered [2]
85:4; 86:1
administration [6]
18:2, 5, 13; 24:14; 29:8; 54:22
administrator [46]
10:13; 17:2; 20:11; 50:18, 25; 51:15; 52:13; 54:20; 55:5, 9, 10, 12, 16, 18; 58:16; 60:16, 19; 62:12; 64:25; 66:4, 23; 67:1; 69:16, 24; 70:3; 75:23; 76:2, 6, 11, 14, 16, 21, 25; 77:4, 9, 13, 18; 78:8, 12; 80:4; 81:3; 82:19; 98:1, 15; 101:2, 15
administrator's [3]
18:11; 22:22; 58:20
administrators [1]
50:21
admission [1]
86:11
admitted [6]
76:21, 25; 77:5, 9, 13; 82:6
advise [1]
13:6
affairs [1]
94:8
age [3]
98:4, 10, 17
agency [3]
72:18, 19, 22
agent [1]
89:13
ages [3]
9:11; 98:12, 18
agree [3]
65:24; 82:7; 113:5
agreeable [1]
109:21
agreed [2]
109:25; 113:3
Agreement [1]
113:9
agreement [2]
26:21; 89:4
AL [1]
1:5
alarms [1]
50:9
Alleged [1]
16:11
allow [2]
13:11, 14
allowed [4]
77:19, 23; 78:1, 4
alternatives [4]
72:5, 11; 74:8, 10
amended [1]
88:13
America [4]
55:3; 57:12; 58:9; 59:8
AMERICAN [1]
1:5
amount [3]
70:16, 24; 71:20
amounts [2]
70:18; 71:12
Amy [1]

51710 5900

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9:12
analysis [1]
21:14
Angeles [1]
2:11
answer [18]
9:17; 40:7; 42:16; 44:19;
62:22; 68:11, 13, 21;
82:4, 5; 92:17; 99:1;
102:13; 104:1, 2, 11;
108:12
answered [3]
39:6; 68:4; 106:18
answers [1]
106:10
Antonio [11]
8:8; 10:9; 15:14; 23:9;
36:6; 37:6, 21; 42:21;
49:15; 51:21; 53:9
anybody [2]
34:18; 35:4
apartments [2]
57:25; 58:3
appreciate [1]
110:4
approached [1]
23:24
Approximately [16]
7:14; 8:10; 11:15, 18;
12:8; 15:15; 17:15;
19:11, 17; 25:10; 30:21;
31:16; 36:1; 37:14;
38:22; 103:5
approximately [7]
6:5; 9:3; 14:9; 19:2, 12;
27:23; 30:23
April [9]
54:25; 55:20; 57:10;
58:10, 12, 15; 64:24;
66:13
area [13]
21:13, 17, 24; 22:14;
28:18; 29:6; 35:14; 46:2;
72:10; 77:24; 79:24;
105:22; 106:21
areas [2]
46:18; 67:8
Argumentative [1]
40:4
arrangement [1]
29:21
arteriosclerosis [1]
77:10
article [6]
74:25; 99:20; 100:13, 19,
22; 102:20
articles [26]
21:23; 25:16, 19; 34:3;
37:10, 23; 38:2, 4, 7, 10,
14, 19, 20, 22, 25; 39:4;
41:8; 42:22; 46:7, 20;
74:23; 79:6; 89:15;
91:23, 25; 93:11
asking [5]
71:13; 100:18; 107:3, 8;
113:25
asks [3]
87:5; 90:18; 93:24
aspects [1]
18:13
assessment [5]
86:17, 18; 87:1, 5;
107:17
assessments [1]
86:23
assignment [1]
39:23
assignments [2]
39:18; 40:24
assist [1]
52:11
assistance [1]
58:5
assistant [9]
26:3, 5, 14; 34:8; 36:10;
50:21; 55:12; 89:19;
91:24
assisted [1]
74:16
Association [1]
35:9
Assume [1]
71:23
assume [1]
93:25
assumed [1]
90:3
assumes [4]
44:18; 55:14; 82:2; 90:8
attempt [1]
75:10
attend [2]
10:18; 22:3
attended [9]
16:25; 17:1, 3, 7, 16;
20:6, 19, 22; 21:6
attention [1]
88:14
Attorney [2]
113:21, 25
attorney [6]
23:9; 31:5, 12, 13;
112:13, 16
attorney-client [1]
25:2
Attorneys [1]
113:4
attorneys [7]
7:9; 25:23; 43:15, 25;
45:22; 47:25; 92:2
attribute [1]
59:17
audio [1]
93:24
August [1]
9:23
Austin [7]
1:24; 17:2; 18:1, 24;
29:1; 30:20; 40:13
authored [1]
21:23
available [1]
98:3
Avenue [2]
2:10, 17
Average [2]
17:21, 22
average [12]
78:19; 99:7, 8, 17; 100:2,
23; 101:8, 20; 102:1;
103:13, 18; 108:22
aware [11]
27:21; 67:11, 15; 68:24;
71:20; 74:12, 16, 20;
81:16; 101:18, 24

– B –

B's [2]
17:23, 24
background [4]
16:18, 20, 23; 36:20
Bankston [1]
1:23
base [1]
62:24
Based [6]
70:21; 80:19; 81:2;
82:18; 83:9; 98:19
based [10]
25:1; 29:22; 41:14;
60:18; 63:12; 71:17;
80:2; 84:16; 97:25;
98:14
bases [1]
37:18
Basically [2]
14:4; 65:23
basically [4]
55:9; 60:14; 65:19;
93:11
basis [7]
6:16; 68:13; 79:15;
90:19, 20; 91:5; 97:23
Bates [2]
5:24; 6:11
bearing [1]
6:11
Beaumont [3]
2:5, 25; 112:25
becoming [1]
24:4
beds [16]
51:24; 52:1; 56:7; 57:4,
6, 7; 61:15, 16, 19, 21,
25; 62:7; 63:18, 20;
74:15; 85:21
behalf [1]
29:14
behavioral [1]
108:19
behaviors [1]
38:7
belabor [1]
15:5
belief [1]
111:8
believe [23]
18:3; 19:19; 30:10, 16;
35:1; 36:3, 5, 25; 37:17;
41:1; 53:7; 54:13; 74:25;
76:8; 81:9, 11; 93:5;
96:2, 23; 102:14; 103:2,
8; 109:16
benefit [2]
16:19, 21
Bexar [1]
10:3
billing [6]
43:5; 67:8, 25; 68:24;
69:5; 94:9
bills [1]
94:7
bit [1]
16:17
Bladder [1]
78:10
bladder [2]
54:14; 78:9
blame [1]
50:11
blank [1]
31:19
Bless [1]
77:21
board [2]
20:10; 49:24
body [1]
66:10
books [2]
18:25; 19:4
born [2]
10:16, 17
bought [1]
59:7
bowel [1]
54:13
Brazos [1]
1:24
break [9]
8:3; 34:14; 35:17; 39:8;
46:25; 87:18; 106:12, 19;
109:5
breakdown [1]
84:9
breakdowns [2]
98:13, 17
breath [2]
84:25; 85:22
breathing [2]
84:22; 85:21
BRIEF [2]
47:6; 109:11
briefly [1]
109:2
bronchitis [1]
77:6
budgetary [1]
52:8
Building [2]
2:24; 112:24
business [1]
10:7

– C –

C's [2]
17:23, 24
C-a-s-t-o-r-e-n-a [1]
26:11
C.A. [1]
1:4
C.V. [3]
43:4, 8; 72:14
California [1]
2:11
call [4]
67:12; 73:5; 97:15;
103:11
calling [1]
102:15
calls [1]
103:25
cancer [6]
11:10; 73:16; 76:22;
77:1; 78:9, 10
capacities [3]
51:9, 12, 13
car [3]
38:21; 89:22; 91:21
cardiovascular [4]
76:7, 18; 82:21, 25
Care [2]
29:11; 35:9
care [20]
39:13; 44:14, 15, 22;
52:10; 56:6; 57:2; 65:3;
70:10, 11; 72:25; 73:21;
74:3; 78:16, 19; 79:1, 2;
81:24; 82:7; 97:19
case [55]
6:7; 14:20; 16:8, 15;
17:10; 21:11; 22:17, 23;
23:5, 25; 24:5, 12, 16,
19; 25:12; 26:2, 23; 27:1,
7, 13, 24; 29:21; 30:4, 9;
31:13; 32:11, 20; 33:15;
34:6; 39:16; 40:10; 41:4;
42:13; 43:22, 25; 45:4, 7,
20; 46:22; 48:22; 53:17,
18, 23; 79:7; 87:7;
89:14; 90:21, 23; 91:6,
22; 93:22; 95:11; 99:5;
111:6
cases [3]
23:11, 12; 77:3
Castorena [6]
26:6; 36:12, 13, 14;
37:15; 38:2
Castorena's [1]
36:19
caused [1]
79:18
census [1]
56:1
Center [1]
2:17
Centers [4]
55:3; 57:12; 58:9; 59:8
Certification [1]
112:22
certification [2]
65:6, 12
Certified [1]
112:3
certified [5]
56:8; 57:7; 61:16; 65:9,
24
certify [5]
111:4, 9; 112:4, 7, 12
cetera [1]
99:18
change [4]
58:10, 17, 18; 64:3
changes [1]
97:4
Charles [3]
23:7, 8; 29:3
Charlotte [2]
2:23; 112:23
charts [1]
42:2
checked [1]
113:5
chemotherapy [2]
86:1, 6
children [5]
9:6; 10:4; 13:4, 6, 8
choice [2]
107:12, 13
Chris [1]
51:1
chronic [1]
77:6
cigar [1]
12:12
cigarette [4]
12:3; 13:11, 14; 79:5
cigarettes [3]
12:8, 10, 24
cigars [2]
12:10, 15
Cindy [1]
52:21
cites [1]
100:13
cities [1]
20:13
Civil [2]
113:7, 8
claim [3]
67:7; 79:16, 20
claims [1]
15:7
class [1]
21:20
classified [1]
98:9
clause [2]
107:4, 8
clear [3]
54:11; 62:3; 102:8
cleared [1]
54:15
clearer [1]
69:12
clerical [1]
5:14
client [4]
25:3; 29:14, 15; 31:11
Club [2]
22:6
clubs [1]
22:11
CMO [3]

51710 5901

http://legacy.library.ucsf.edu/tid/bsq07a00/pdf
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4:11; 96:12, 20
coaching [1]
108:6
Coahoma [1]
9:2
code [2]
50:4, 6
cognitive [1]
108:19
College [4]
17:1, 4, 8, 16
college [2]
17:7; 22:24
color [1]
99:22
Colorado [1]
53:10
coming [2]
55:25; 73:24
comments [1]
46:17
community-based [4]
72:4, 10; 74:7, 10
companies [4]
25:9; 44:8; 47:25; 92:3
COMPANY [1]
1:5
company [3]
24:7, 8; 31:3
compensated [1]
30:3
complete [2]
112:8; 113:3
complies [1]
91:20
component [1]
67:4
composed [1]
75:19
compound [1]
55:14
comprised [1]
70:9
computer-assisted [1]
25:18
computers [1]
33:2
CONCLUSION [4]
5:4; 48:16; 95:1; 96:14
conditions [1]
21:8
confirmed [1]
99:5
connection [2]
5:14; 90:7
consider [3]
46:1; 80:8; 99:20
consideration [1]
110:4
considered [6]
11:21; 58:2; 67:11; 90:20; 101:6; 113:15
consistent [2]
42:22; 62:24
consultant [3]
16:14; 45:13, 15
consulted [1]
34:9
contacted [1]
23:6
contained [7]
1:25; 33:7; 49:1; 57:5; 96:2; 99:14; 112:11
containing [1]
43:10
contains [1]
76:7
context [2]
14:13; 15:24
continuation [1]
110:6
continue [1]
72:24
continuing [3]
20:12, 15; 22:3
contract [1]
29:18
contracts [1]
73:21
contributed [1]
80:21
convenient [1]
87:14
conversation [2]
28:14; 32:23
conversations [1]
36:2
COPD [4]
75:24; 83:11, 25; 84:4
copy [9]
27:17; 48:21; 88:21, 23; 94:19; 95:8, 13; 108:15; 113:19
corporate [1]
49:25
corporation [1]
65:20
corrections [1]
111:10
correlating [1]
41:15
cost [3]
81:23; 82:7; 113:24
costs [4]
45:11; 80:22; 81:12; 84:14
coughing [1]
85:17
Counsel [29]
1:25; 2:6, 12, 19; 8:21; 9:16; 24:25; 39:6; 40:2; 49:4; 51:4; 60:23; 62:16; 70:1; 76:9, 12; 80:24; 82:2, 23; 84:6; 87:11; 88:20; 90:2; 91:10; 95:8; 98:7; 99:24; 100:6; 112:11
counsel [4]
89:5, 13; 92:1; 93:13
counsel's [1]
108:6
COUNTY [2]
111:2; 112:2
County [3]
9:19; 10:3; 19:14
county [1]
9:14
course [11]
17:2; 18:2, 5, 11, 17, 19; 19:1, 17; 20:1, 5; 107:1
courses [8]
17:13; 19:9, 13, 16; 20:6, 18, 22; 21:6
COURT [1]
1:1
Court [2]
112:10; 113:10
court [1]
90:25
cover [1]
55:24
covered [2]
34:11; 44:2
created [2]
47:20, 22
Creek [10]
15:14; 16:4; 55:1, 6, 20; 57:19; 58:16; 59:11; 60:2, 6
CRIS [2]
2:3; 113:22
Cris [3]
7:8; 105:13; 107:2
criteria [2]
71:17, 18
Crow [1]
2:17
Crowley [1]
1:23
CSR [2]
2:23; 112:22
current [2]
53:24; 82:9
currently [7]
10:10; 11:16; 49:14; 72:4; 77:18; 89:21; 98:14
CURRICULUM [2]
4:8; 48:14
curriculum [1]
18:10
Custodial [1]
113:21
custody [1]
102:25

– D –

Dallas [1]
2:18
dangers [2]
45:24; 79:5
data [5]
37:18; 43:16; 101:18, 24; 107:6
Date [1]
112:23
date [2]
109:19; 110:6
dated [1]
6:10
Day [1]
2:16
day [7]
6:22; 12:9; 64:1; 71:24; 111:13, 20; 112:19
days [10]
19:20; 56:1, 18, 20; 62:13; 63:6, 12, 23; 108:21
Deacon [9]
23:7, 8, 10, 11, 13, 15, 22; 29:3; 39:11
deal [1]
20:23
dealing [10]
18:13; 21:7, 24; 25:14; 27:6; 37:23; 38:4, 5, 7; 67:8
deals [1]
93:19
dealt [1]
20:19
death [2]
73:14, 18
DEBORAH [11]
1:14, 21; 4:2, 9, 10; 7:1; 94:24; 96:11; 111:4, 16; 113:2
Deborah [1]
96:20
Debra [1]
7:7
decide [1]
50:13
decided [2]
50:15; 53:23
defend [1]
45:19
Defendant [2]
2:12, 19
defendant [1]
113:14
Defendants [5]
89:4, 5, 12, 14
defendants [4]
5:16; 90:5, 13; 113:15
deficiency [3]
54:11, 12, 15
Definitely [1]
39:2
definition [1]
103:21
definitions [2]
104:5, 7
degree [1]
36:21
Del [3]
10:17, 18; 16:24
dementia [3]
77:15, 16
demographics [1]
103:17
Dennis [1]
9:23
Denver [1]
53:10
Department [4]
5:25; 34:22; 71:3, 6
DEPOSITION [10]
1:13; 4:2, 7; 5:2, 5; 48:17; 95:2; 96:15; 110:16; 113:1
Deposition [3]
113:2, 5, 7
deposition [25]
1:20; 5:17; 7:11; 15:3, 8, 15, 25; 16:3; 27:19; 32:3; 68:9; 88:12, 13; 90:8; 91:4; 94:20; 109:18; 112:7, 11, 14; 113:14, 18, 21, 24
depositions [8]
14:9, 13, 15, 22; 45:4, 7; 94:16; 108:9
Describe [6]
16:22; 18:10; 19:13; 33:7, 20; 57:25
describe [5]
15:6; 20:8; 22:9; 30:11; 69:8
DESCRIPTION [1]
4:6
destroy [1]
89:25
detect [1]
67:19
determine [3]
44:14, 21; 70:22
determined [1]
100:4
determines [1]
71:15
determining [2]
79:17, 21
develop [1]
72:21
diagnoses [4]
77:14; 81:16; 83:1, 12
Diagnosis [1]
41:24
diagnosis [13]
42:25; 43:11; 75:24; 76:3, 7, 17, 22; 77:1, 5, 10; 78:9, 13; 84:17
dictated [1]
33:10
died [1]
15:10
dietary [1]
18:14
differ [2]
61:14; 98:22
differences [1]
41:23
difficult [4]
39:25; 62:22; 64:19, 25
digging [1]
105:24
direct [1]
88:14
direction [2]
37:16; 112:8
directional [1]
67:4
director [7]
35:8; 37:1; 51:17; 57:11, 17; 58:13; 59:1
discharged [1]
72:24
disclosure [1]
95:10
discovery [1]
90:14
discussed [7]
22:7; 35:10; 39:9; 40:12; 91:13; 92:8; 94:8
disease [7]
76:7, 18; 79:21; 81:20, 23; 82:21, 25
diseases [13]
21:3, 8; 22:15; 36:18; 37:12, 24; 44:11, 16, 24; 45:2; 46:2; 81:15; 87:8
distinct [1]
99:3
DISTRICT [2]
1:1
District [2]
68:10; 108:7
DIVISION [1]
1:2
divisional [1]
52:21
divorce [2]
9:13; 10:2
divorces [1]
13:18
doctor [1]
31:3
Doctors [1]
34:20
doctors [1]
34:18
document [11]
5:23; 6:3, 6, 14, 20; 47:20, 21; 55:15; 96:3, 23; 99:25
documentation [6]
32:13; 33:6, 9, 21; 98:19; 102:5
documented [1]
37:17
documents [42]
5:15, 18, 20; 25:22; 26:1, 12, 13, 14, 15, 16, 17; 27:18; 28:1, 4; 32:9, 16; 34:5; 43:10; 47:15, 16, 18; 88:16, 18; 89:3, 8, 11, 19; 90:4, 6, 13, 19, 24; 91:3, 4, 7, 18, 20, 21; 92:3, 7; 98:3; 99:14
doesn't [1]
87:18
dollar [4]
70:16, 17, 24; 71:19
dollars [2]
24:9; 71:12
Doug [1]
58:24
draft [3]
93:2; 97:3, 7
drafts [1]
93:7
drawing [1]

51710 5902

31:19
driver's [1]
10:25
DSJ [6]
10:11, 12, 14; 49:18, 20; 50:17
dual [1]
64:6
due [2]
81:12; 85:13
duly [2]
7:2; 112:6
duties [1]
52:5

- E -

easier [1]
85:22
easiest [1]
97:13
EASTERN [1]
1:1
Eastern [2]
68:10; 108:7
Edinburg [1]
67:3
education [6]
20:2, 12, 16, 23; 22:3; 65:21
educational [5]
16:18, 19, 22; 17:4; 36:19
effects [1]
20:20
eight [1]
73:21
EISENBERG [77]
2:9; 5:12; 8:20; 9:15; 14:14; 22:20; 24:25; 25:5; 27:14; 34:13; 35:18; 39:5; 40:1, 4, 6; 42:9, 14, 17; 44:17, 25; 46:24; 49:4, 11; 51:3; 55:13; 60:22; 61:2; 62:1, 15; 68:3, 6, 15; 69:10, 17, 25; 75:8; 76:8, 12; 78:21; 80:23; 82:1, 10, 22; 83:15; 84:5; 86:20; 87:11, 19; 88:20, 24; 90:2; 91:9; 95:7; 98:6, 24; 99:24; 100:5, 12, 16; 101:21; 102:3; 103:23; 104:10, 17, 22; 105:7, 13, 18; 106:3, 7, 11; 107:1, 14, 23; 109:6; 110:3, 8
Eisenberg [19]
27:2, 24; 28:13, 17, 22; 29:13; 30:13, 25; 31:19, 23; 32:6; 34:3; 36:4; 39:10, 15; 40:17; 46:6, 13; 47:23
Eisenberg's [2]
31:7, 9
elderly [8]
25:16; 29:11; 36:17; 37:11, 23; 46:19; 58:4; 97:20
elevated [1]
85:21
eligibility [3]
56:24; 65:18; 70:22
emphysema [2]
11:11; 76:3
employed [3]
16:13; 112:13, 16
Employee [2]
13:21; 23:14
employee [4]
15:3; 16:1, 5; 89:13
employees [2]
13:23; 14:16
employer [3]
14:5; 23:16, 18
employment [1]
53:24
enacted [2]
35:13; 44:7
encourage [1]
12:23
end [2]
87:25; 110:11
engagement [1]
89:4
enhanced [2]
55:21; 56:17
ENTITLED [2]
4:9; 94:24
entitled [1]
106:24
entries [2]
33:1; 49:1
entry-level [1]
17:12
environment [1]
72:25
epidemiology [1]
20:24
equal [1]
82:8
equation [1]
64:3
error [1]
5:14
escapes [1]
99:23
essentially [1]
84:14
establish [2]
72:15, 16
estimate [3]
27:11; 60:25; 64:13
ET [1]
1:5
et [1]
99:18
Europe [1]
53:3
eventually [2]
54:15; 101:12
evidence [4]
44:19; 55:15; 82:3; 90:9
evidently [1]
95:12
exact [2]
52:17; 64:20
exactly [5]
14:23; 15:17; 19:25; 52:4; 105:12
EXAMINATION [1]
7:5
except [3]
64:9; 68:13; 113:11
exception [2]
61:11; 101:15
excessive [1]
85:13
excluding [1]
102:5
Excuse [1]
77:20
executive [1]
35:8
EXHIBIT [5]
4:6; 5:1; 48:13; 94:23; 96:10
Exhibit [12]
48:21; 49:1, 7, 9; 88:12, 15; 92:21; 95:6, 20, 25; 96:19; 97:7
exist [3]
88:18; 91:18; 93:4
existed [1]
50:4
existence [1]
28:11
expended [1]
24:9
expenses [2]
30:1; 81:5
experience [21]
14:4; 17:9; 24:13, 21; 39:13; 45:10, 13; 48:23; 49:2; 60:18; 61:1; 63:13; 67:24; 80:19; 81:2; 82:18; 83:9; 86:25; 101:3, 11; 103:19
expert [10]
14:19; 24:4; 25:4; 26:22; 28:15; 34:10; 46:1; 67:13; 80:8; 106:20
expertise [11]
17:9; 21:16, 25; 28:18; 29:7; 67:7; 79:16, 21, 23; 105:22; 107:15
Expiration [1]
112:23
Explain [3]
16:21; 70:7; 73:9
explain [7]
14:12; 28:17; 51:13; 65:11; 69:14, 22; 70:2
explaining [1]
66:12
express [1]
87:7
expressed [1]
95:25

- F -

face-to-face [1]
30:7
facilities [25]
40:20; 41:19; 54:21; 57:20, 21; 59:4; 60:15; 61:11; 63:22; 66:17; 69:5; 70:5; 74:16, 24; 75:6, 16; 80:3; 81:18, 19; 84:19, 22; 85:3, 20, 24; 101:14
facility [35]
16:2; 25:14; 40:20; 41:16, 19; 50:5, 9, 10, 18, 25; 51:2, 11, 19; 52:8; 54:22; 55:2; 56:9; 57:3, 8; 58:2; 59:20; 60:7; 61:17; 65:3, 8, 15, 17, 20; 66:5; 69:15; 72:20, 22; 73:12; 81:22; 84:25
fact [7]
55:17; 61:18; 74:13; 81:22; 82:2; 90:5; 105:15
factor [1]
104:8
factors [1]
82:8
facts [3]
44:18; 55:14; 90:8
factual [1]
98:11
fair [2]
60:1; 97:15
fall [2]
17:17; 99:3
familiar [2]
48:9; 74:11
family [1]
11:9
Federal [2]
5:11; 113:8
fee [3]
29:22, 24; 89:3
feel [2]
92:3; 106:24
felt [1]
72:24
female [1]
15:9
fewer [1]
108:19
field [2]
24:14; 80:9
fight [1]
50:14
figure [3]
63:11; 72:2; 97:13
filed [2]
112:10; 113:20
filled [1]
65:18
final [1]
97:7
financial [3]
29:20; 94:8; 112:17
find [8]
25:18; 37:13, 22; 38:1; 42:11; 100:1; 107:3, 8
finds [2]
99:6, 17
fine [1]
77:22
finish [1]
107:24
fire [2]
50:9
firm [2]
31:7, 9
First [1]
26:8
first [22]
8:17; 12:1; 15:8; 16:7; 28:7, 14; 30:12, 15; 39:10, 24; 65:8, 13; 66:22; 72:9; 86:16; 95:16, 23; 96:3; 97:3; 103:4; 112:6; 113:25
five [1]
57:23
follow-up [1]
19:9
follows [3]
2:1; 7:2; 113:5
foregoing [3]
111:5, 6; 112:4
Foreign [1]
113:23
foreign [1]
113:24
forgetting [1]
49:6
form [7]
70:21; 90:19; 91:5; 92:4, 22; 113:12
formal [1]
33:16
former [15]
73:3; 74:23; 75:5, 15, 20; 81:21; 82:9; 84:4, 18, 21, 24; 85:2, 11, 15, 19
forming [2]
90:20; 98:8
forms [1]
65:17
forward [1]
110:5
FOUND [4]
5:3; 48:15; 95:1; 96:14
found [2]
46:19; 100:17
foundation [2]
44:18; 103:24
four [2]
83:24, 25
FOUST [3]
2:23; 112:3, 22
frail [1]
97:20
frame [4]
41:7; 52:17; 53:25; 57:1
fraud [3]
67:8, 12, 19
fraudulent [5]
43:5, 10; 67:25; 68:24; 69:5
Fredericksburg [4]
49:14, 20; 50:19; 53:21
freshman-type [1]
17:13
friends [1]
11:10
front [1]
97:6
funded [1]
101:7
furnished [1]
89:16
future [1]
68:16

- G -

garnered [1]
42:12
gave [5]
14:15; 15:8, 25; 89:20; 108:15
General's [1]
80:6
generated [1]
32:10
gentleman [1]
30:25
gerontological [2]
18:13; 19:16
gets [1]
71:24
GETZ [1]
113:6
Getz [1]
3:2
gimmicks [1]
80:12
give [19]
14:22; 16:19; 22:14; 27:11; 50:1; 52:11; 60:25; 63:2, 11, 15, 16; 64:19, 22; 79:25; 83:3, 19; 98:13; 99:25; 105:14
GIVEN [1]
112:18
given [19]
6:4; 14:8, 16; 15:16; 20:11, 13; 22:11, 13; 27:17; 34:4; 39:18; 40:24; 42:23; 64:1; 84:12; 94:16, 18; 111:6; 112:5
gives [2]
17:8; 70:22
giving [1]
7:20
goes [1]
65:12
gosh [1]
11:25
grades [1]
17:20
graduate [1]
10:20
graduated [1]
16:24

51710 5903

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graduating [1]
21:20
Grand [1]
2:10
greater [3]
82:8; 83:14; 108:22
grief [1]
38:5
group [2]
5:20; 74:13
grouping [1]
98:4
groups [1]
99:3
guess [13]
27:14, 15; 32:16; 39:7, 23; 40:9; 53:19; 58:8; 66:6; 71:13; 73:5; 97:2; 107:12
Guide [1]
6:10
gum [1]
80:12

- H -

half [2]
21:21; 46:12
HAND [1]
112:18
hand [2]
88:11; 96:18
handed [1]
48:20
handwritten [2]
33:2; 92:13
happy [1]
8:4
hard [1]
63:1
harmful [1]
46:21
He's [1]
23:9
head [1]
55:17
Health [5]
10:11, 12, 14; 34:22; 35:9
health [8]
20:19; 23:1, 2; 72:18, 19, 21; 74:12; 80:22
health-type [1]
22:18
hear [1]
13:2
heart [1]
109:20
held [1]
51:14
help [2]
45:19; 104:18
helped [4]
35:14; 36:11; 72:15, 16
helpful [2]
24:12, 19
Here's [1]
88:23
here's [1]
71:22
hereby [2]
111:4; 112:4
herein [1]
1:25
high [4]
10:20; 11:21; 16:24; 21:20
higher [4]
59:19, 22, 23; 78:19
hire [1]
29:17
hired [7]
14:18; 22:23; 23:5; 24:23; 26:25; 27:24; 28:2
hiring [1]
29:14
histories [1]
86:11
history [4]
86:13, 15; 87:2, 5
HMO [2]
72:15; 74:5
hold [5]
54:4, 10, 18, 23; 61:20
home [53]
10:13; 13:12, 24; 15:10; 18:2, 5, 6, 8; 22:7; 24:14, 21; 28:16; 29:8, 11; 36:5; 38:5, 6, 8; 40:15, 22; 41:22; 42:21; 44:5, 7, 14; 45:11; 60:19; 63:8, 9; 64:19; 65:12, 24; 69:14; 72:18, 19, 21, 25; 73:2, 3; 74:12, 13, 24; 77:17; 78:15; 79:12; 82:7; 97:21; 98:18, 21; 99:3; 104:14; 105:3; 108:19
Homes [1]
6:9
homes [61]
14:6; 21:24; 22:11; 24:10; 25:16; 36:17; 37:2; 41:24; 43:4, 8; 44:6, 10, 16, 23; 52:20; 54:2; 60:21, 23; 61:2, 4; 62:12, 16; 63:13; 68:1; 69:1, 24; 70:3; 75:2, 3, 22; 76:1, 16, 20, 24; 77:4, 8, 12; 78:7, 11; 80:20, 22; 81:3, 6, 14; 82:19; 83:10; 84:14; 85:8, 12, 16; 86:4, 12, 18, 25; 97:18, 25; 98:16; 101:1, 11; 107:21; 108:21
hope [2]
68:15, 18
hospice [6]
72:16; 73:9, 14; 78:16, 19; 79:1
hospice-type [2]
73:11, 13
hospital [2]
56:15; 63:5
hour [2]
6:5; 29:25
hours [6]
19:21; 20:12, 14; 29:22; 37:17; 46:12
House [5]
6:7; 102:15, 17, 20, 25
housekeeping [1]
18:14
Houston [9]
3:3; 31:15; 36:4; 41:3; 43:14; 44:3; 103:6, 7, 8
Howarton [1]
58:24
HRO [2]
102:14, 15
Hull [1]
1:24
Human [4]
6:1; 34:22; 71:4, 6
husband [1]
8:17
HUTCHINSON [1]
2:16
hygiene [1]
21:17
hypnotism [1]
80:12
hypothetical [1]
103:24

- I -

I've [5]
48:20; 64:23; 71:22; 90:16; 95:16
identical [1]
68:17
IDENTIFICATION [4]
5:3; 48:15; 94:25; 96:13
identify [1]
95:6
illnesses [2]
21:1; 55:25
imagine [1]
103:16
immediate [2]
53:5; 58:22
imminent [2]
73:15, 19
impact [4]
103:17, 21; 104:8; 107:15
impeach [1]
7:21
implement [1]
74:2
implemented [1]
73:9
impression [1]
31:6
improve [1]
66:6
in-house [2]
72:16; 73:9
inaccurate [1]
43:10
Inc [5]
2:23; 3:2; 59:2, 7; 112:23
include [1]
102:7
included [1]
5:19
incomplete [1]
103:24
Incorporated [1]
15:12
increase [2]
59:17; 81:23
increased [7]
56:1, 22; 59:14; 60:5; 80:21; 81:5, 11
independent [1]
57:24
indicate [3]
28:2; 73:8; 79:11
indicated [1]
73:20
indicates [7]
57:1, 11, 24; 58:12, 25; 101:20; 102:1
individual [2]
36:22; 58:3
industrial [1]
21:17
industry [9]
25:24; 26:19, 23; 30:8; 45:19, 22; 60:19; 95:24; 96:25
industry's [1]
46:21
inform [1]
6:17
informal [1]
33:17
information [11]
33:10; 34:19; 41:14, 15, 18; 42:6, 12; 45:23; 46:19; 98:20; 100:23
informed [2]
5:13; 6:13
initial [7]
8:18; 9:24; 28:19; 32:22; 86:17; 87:4; 95:10
initialed [1]
111:11
initially [3]
18:7; 28:20
injured [1]
15:3
injury [5]
13:21, 22; 16:1; 23:14
inquire [1]
94:7
inquires [1]
93:11
instance [1]
1:22
instruct [1]
68:12
insurance [1]
23:20
intend [1]
105:9
interest [1]
112:17
interested [2]
18:4; 24:3
interject [1]
90:10
intervention [1]
70:13
interview [1]
28:19
interviewed [2]
28:21; 30:13
intrusive [1]
102:4
investigation [1]
33:24
involved [9]
15:7; 21:11; 22:17; 29:23; 52:7, 9; 65:11; 73:22; 74:3
issue [1]
107:2
Issues [1]
6:10
issues [11]
15:7, 25; 22:7; 30:9; 34:11; 41:20; 50:4, 7; 52:8, 10, 11
Item [1]
93:10
item [1]
66:3
items [2]
94:19; 113:5

- J -

James [1]
8:18
JANE [1]
2:16
JEFFERSON [1]
112:2
Jeremy [1]
9:12
job [6]
49:19; 50:14; 53:20, 22; 58:18; 66:22
John [1]
8:8
Jones [1]
2:16
July [5]
1:20; 4:4; 6:22; 58:25; 59:10
June [1]
10:15
Junior [3]
16:25; 17:8, 16
jurisdiction [2]
113:23, 24
jury [1]
107:16

- K -

keep [6]
19:5; 20:15; 38:14; 47:14; 78:4; 106:6
kept [2]
27:5; 33:5
Kerrville [2]
57:20, 22
Kiwanis [1]
22:6
knowing [1]
70:24
knowledge [11]
53:14; 70:19; 71:5; 72:10, 12; 75:14; 86:6; 93:17, 18; 94:2; 111:8
Kyle [2]
2:24; 112:24

- L -

L-a-l-l-y [1]
10:1
Lally [2]
9:24; 11:4
Laredo [1]
66:20
large [3]
83:2, 6; 101:16
LARRY [1]
2:3
last [8]
9:24, 25; 15:22; 26:8, 10; 34:4; 53:8; 88:15
laundry [1]
18:14
Laurel [1]
2:4
law [1]
18:15
lawsuit [4]
13:18; 14:2; 15:20; 112:14
lawsuits [2]
13:20; 14:16
lawyer [4]
15:2; 23:15; 31:3, 11
lawyers [7]
25:9; 26:18; 30:8; 44:8; 95:24; 96:24; 106:23
leading [3]
99:6, 16, 21
leave [5]
49:19; 51:2; 58:8, 9; 60:3
LEE [1]
112:22
Legal [1]
3:2
Legislative [2]
6:8; 103:1
Length [1]
41:20
length [16]
42:11, 20; 44:5; 99:7, 8, 18; 100:2, 23; 101:9, 20; 102:1; 103:13, 18, 21; 104:9; 108:22
lengths [1]

51710 5904

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102:18
Let's [3]
40:8; 41:17; 54:25
let's [3]
26:9; 50:17; 87:21
Letter [1]
90:18
letter [7]
88:17; 89:2; 91:2, 17; 92:6, 11, 16
level [3]
70:20; 71:16; 78:18
levels [1]
70:10
libraries [4]
22:19, 24, 25; 25:17
library [4]
19:6; 26:4; 36:15; 37:20
license [4]
10:25; 20:3, 11; 22:23
Licensed [1]
52:3
licensed [6]
50:18; 60:20; 61:15, 19; 66:22; 67:2
licensure [1]
20:10
life [2]
50:4, 6
lifting-type [1]
16:8
limited [2]
6:19; 61:24
Lion's [1]
22:6
LIST [2]
4:10; 96:10
List [1]
96:19
list [6]
5:19; 20:15; 38:17, 18; 92:24; 94:15
listed [8]
43:4, 8; 53:25; 55:8, 11, 16; 66:3; 89:18
lists [2]
51:7; 75:1
literature [2]
33:21; 35:11
litigation [6]
7:10; 14:4, 19; 16:14; 39:15; 45:14
live [2]
8:19; 9:1
lived [1]
8:9
Living [4]
55:3; 57:12; 58:9; 59:8
living [3]
11:7; 57:25; 74:16
located [1]
51:21
location [1]
15:13
locations [1]
55:18
long-stay [7]
99:4, 8; 100:3, 24; 101:13; 104:15; 105:5
long-term [1]
65:3
longevity [3]
24:13, 20; 38:5
looks [1]
66:2
Los [1]
2:11
lot [3]
79:11; 105:16; 107:8
lots [1]
65:21
LOU [1]
113:6
Lou [1]
3:2
Louis [1]
10:9
lucky [1]
53:5
LUCY [1]
2:9
Lucy [2]
27:2; 28:22
LUNCH [1]
88:3
lunch [1]
87:12
lung [3]
11:10; 73:16; 76:22
LVN [1]
79:1

- M -

ma'am [4]
12:4; 23:3; 45:16; 71:9
maiden [1]
11:2
maintain [2]
19:4; 89:24
major [1]
40:21
managed [6]
57:2; 73:21; 74:3; 75:7, 16
Management [1]
6:2
management [3]
29:9; 36:24, 25
manager [3]
18:9; 52:5; 54:6
manner [2]
22:12; 23:23
Manor [27]
15:14; 16:4; 51:16, 18, 24; 54:3, 5, 9, 17; 55:1, 6, 20; 57:19; 58:16; 59:11; 60:2, 7; 65:1, 2; 66:5, 7, 10, 14, 15, 19; 67:3
Manors [1]
66:18
MARKED [4]
5:2; 48:14; 94:25; 96:13
marked [5]
48:20; 49:9; 88:11; 95:5; 96:18
Maroney [1]
1:23
marriage [3]
9:7, 21; 10:5
married [3]
8:11, 13; 9:4
Marshall [1]
8:8
master [1]
36:21
masters [2]
36:23, 24
material [2]
36:16; 78:5
materials [3]
18:20; 19:1, 5
matter [5]
20:9; 24:24; 39:3; 87:18; 112:17
matters [1]
18:12
May [7]
54:1, 25; 55:21; 58:15; 59:10; 64:24
McAllen [1]
31:12
MCC [4]
19:8, 18; 20:1, 5
McLennan [2]
17:4; 19:14
mean [14]
33:1; 50:6; 55:22; 56:2; 59:22; 71:2, 10; 73:13; 78:22; 82:23; 98:12; 100:10, 12; 105:14
means [1]
70:7
measures [1]
108:23
Med-Line [3]
48:6, 8, 9
Media [1]
3:2
Medicaid [55]
24:8; 43:5, 10; 60:8; 61:6, 13, 16, 19, 21, 25; 62:7; 63:7; 64:8, 17; 67:9, 20; 68:1; 69:5, 9, 13, 18, 19, 23, 25; 70:4; 72:5; 74:2, 18; 75:19; 78:15; 80:24, 25; 81:7, 12, 13; 82:12, 20; 83:10, 16, 17; 84:6, 7, 11, 13; 85:8, 12, 16, 20, 25; 86:9; 100:25; 101:8, 12, 17; 104:4
Medicaid-type [1]
60:21
medical [11]
22:24; 44:15; 70:22; 80:9; 81:5; 83:11; 86:16, 17, 23; 87:1; 108:18
Medicare [38]
55:21, 24; 56:1, 7, 11, 17, 20, 24; 57:3, 8; 60:8; 62:14, 25; 63:5, 12, 21; 64:12, 17, 18; 65:6, 9, 12, 22, 23, 25; 69:15, 17; 74:5; 80:21, 23; 101:6, 10, 17; 107:19; 108:17, 20
medication [2]
85:17; 109:20
meet [3]
35:21; 43:15; 65:25
meeting [23]
29:2; 30:12, 19, 24; 31:14, 18; 32:5; 36:4; 39:10, 24; 40:8, 10, 12; 41:2, 3; 43:14; 44:2; 46:5, 10; 96:3; 103:7, 9
meetings [6]
29:23; 30:7, 12; 31:22; 93:25; 94:1
meets [1]
71:18
members [1]
11:9
methodology [1]
71:20
middle [4]
8:18; 9:24; 21:21, 22
Miller [1]
51:1
minimal [1]
60:12
minute [6]
26:13; 27:22; 79:13; 89:17; 106:4, 8
minutes [8]
47:3, 9; 87:24; 88:5; 105:20; 109:8, 14; 110:10
misstated [1]
76:9
misstates [1]
55:15
moment [3]
49:5; 99:23; 106:13
month [1]
12:9
mouths [9]
19:19; 30:22; 40:9, 13; 41:3; 52:18; 73:15, 19; 99:7
Morgan [1]
2:4
morning [1]
102:16
Morris [1]
2:12
mother [3]
11:8; 12:18; 80:11
mouth [1]
77:1
move [2]
40:8; 90:10
MR [42]
2:3; 5:10; 7:5; 8:22; 25:3; 34:15; 35:16; 47:1; 49:8; 60:24; 61:4; 62:20; 68:8, 18; 69:19; 75:10; 82:13, 24; 83:17; 87:13, 21; 88:22; 91:11; 95:9; 100:7, 14; 101:23; 102:9; 104:20, 24; 105:21; 106:5, 9, 17; 107:10, 16; 108:4; 109:4, 16; 110:7; 113:22
Mr [38]
5:13; 6:5, 14, 18; 8:19, 25; 9:1, 4; 23:10, 11, 13, 15, 22; 25:7; 34:17; 35:10, 20; 39:11; 48:19; 49:13; 61:9; 68:20; 69:21; 75:13; 82:17; 83:5, 22; 88:10; 89:1; 91:16; 95:4, 18; 96:17; 100:9, 21; 102:12; 106:15; 108:11
MS [78]
2:9, 16; 5:12; 8:20; 9:15; 14:14; 22:20; 24:25; 25:5; 27:14; 34:13; 35:18; 39:5; 40:1, 4, 6; 42:9, 14, 17; 44:17, 25; 46:24; 49:4, 11; 51:3; 55:13; 60:22; 61:2; 62:1, 15; 68:3, 6, 15; 69:10, 17, 25; 75:8; 76:8, 12; 78:21; 80:23; 82:1, 10, 22; 83:15; 84:5; 86:20; 87:11, 19; 88:20, 24; 90:2; 91:9; 95:7; 98:6, 24; 99:24; 100:5, 12, 16; 101:21; 102:3; 103:23; 104:10, 17, 22; 105:7, 13, 18; 106:3, 7, 11; 107:1, 14, 23; 109:6; 110:3, 8
Ms [30]
5:16, 21; 6:15; 7:8; 27:24; 28:13, 17; 29:13; 30:13, 25; 31:7, 9, 19, 23; 32:6; 34:3; 36:4, 12, 19; 37:15; 38:2; 39:10, 15; 40:17; 46:6, 13; 47:23; 52:23; 53:1; 90:4
mucus [1]
85:13
Munger [1]
2:10
myself [3]
11:21; 33:23; 67:12

- N -

name [22]
7:6, 8; 8:17; 9:24, 25; 11:2; 15:19, 20, 21, 22; 16:5, 7; 26:8, 10; 31:1; 36:10; 50:24; 53:7, 8; 58:23; 67:5; 99:23
names [3]
9:11; 11:5; 18:16
national [1]
108:22
nationally [1]
100:11
nature [2]
15:24; 39:15
nebulizers [1]
85:3
needing [1]
70:13
needs [1]
108:18
negotiated [2]
73:8, 20
negotiating [1]
110:6
nine [1]
8:10
Non-Alzheimer's [1]
77:16
non-Alzheimer's [2]
77:15
nonsmoker [1]
82:9
nonsmokers [2]
75:20; 84:15
noon [1]
87:16
Normally [1]
78:25
normally [4]
70:12; 82:8; 87:2, 5
Normandy [11]
51:15; 52:1; 53:11; 54:2; 61:12, 14, 23; 62:4; 64:2, 9; 101:15
North [3]
66:7, 11, 15
NOTARY [1]
111:23
notations [2]
47:19; 89:8
note [4]
33:23; 47:13; 55:21; 92:14
noted [2]
8:23; 59:13
notes [20]
28:9, 11; 32:9, 17, 19, 22, 25; 33:2, 5, 8, 13, 16, 17; 42:2; 43:19; 48:1, 4; 105:11; 107:4, 11
NOTICE [2]
4:7; 5:2
Notice [1]
113:8
notice [2]
49:9; 88:13
noticed [1]
72:13
Number [2]
93:19, 24
number [17]
10:23, 25; 19:21; 37:8; 61:24; 62:5; 63:12, 15, 18, 24, 25; 64:20, 21; 65:17; 83:3; 104:14; 105:3
numbered [1]
111:6
numbers [3]
63:19; 64:22; 92:15
nurse [4]

51710 5905

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48:3; 85:4; 86:1; 102:22
nurses [1]
37:1
Nursing [4]
6:9; 29:8; 97:18; 99:2
nursing [107]
10:13; 13:23; 14:5; 15:10; 18:2, 5, 6, 8; 21:24; 22:7, 11; 24:10, 14, 21; 25:16; 28:16; 29:11; 36:5, 17, 23; 37:2; 38:5, 6, 8; 40:15, 22; 41:22, 24; 42:21; 43:3; 44:5, 6, 7, 10, 14, 16, 22, 23; 45:11; 52:19; 54:2; 59:23; 60:19, 21, 22; 61:2, 4; 62:12, 16; 63:13; 65:24; 69:1, 14, 24; 70:2, 13; 73:2, 3; 74:24; 75:2, 3, 22; 76:1, 16, 20, 24; 77:4, 8, 12, 17; 78:7, 11, 15, 18, 21; 79:12; 80:20, 22; 81:3, 6, 14; 82:6, 18; 83:10; 84:13; 85:7, 12, 16; 86:4, 12, 18, 25; 87:4; 97:21, 25; 98:15, 18, 21; 101:1, 11; 104:14; 105:3; 107:20; 108:18, 21

- O -

o'clock [8]
6:23; 47:4, 9; 87:25; 88:6; 109:9, 14; 110:11
oath [2]
7:16; 33:12
object [3]
25:1; 49:5; 108:5
Objection [18]
8:20; 9:15; 14:14; 40:1; 42:9, 14; 44:17; 51:3; 55:13; 62:1, 15; 68:3; 69:10; 82:1; 86:20; 98:6, 24; 103:23
objection [7]
8:23; 44:25; 90:11; 102:10; 104:10; 113:14, 15
Objections [1]
113:11
objections [3]
113:11, 12, 13
observed [2]
67:25; 68:25
obtain [1]
26:1
obtained [1]
91:23
obviously [1]
64:15
occasion [1]
12:7
Occasionally [1]
12:13
occasionally [1]
12:12
occupancy [3]
59:14, 18; 60:5
October [9]
6:11; 28:24; 30:16; 39:24; 57:10; 59:1; 66:13; 96:5, 6
OFFICE [1]
112:18
Office [1]
6:1
office [1]
18:9
officed [1]
53:9
offices [1]
1:23
Official [1]
80:7
oh [1]
11:25
Okay [42]
8:5, 22; 11:17, 23, 25; 12:11; 14:15; 17:6; 18:1; 26:10; 33:20; 34:15, 25; 40:24; 41:10; 50:17; 58:21; 61:20; 64:5, 21; 66:16; 67:14; 71:25; 72:21; 80:5; 84:3; 89:21; 90:1, 12; 92:2, 16; 93:24; 95:19, 22; 96:5; 97:12; 102:9; 104:22, 23; 107:19; 108:3; 110:7
old [1]
11:23
older [1]
97:22
Olson [1]
2:10
on-site [1]
52:13
on-the-job [1]
66:25
one-page [1]
94:9
ones [2]
62:20; 74:20
open [1]
53:11
operated [2]
50:19; 53:13
operations [5]
52:7; 57:12, 18; 58:13; 59:2
OPERATOR [3]
3:1; 6:21; 88:5
Operator [1]
113:6
Opinion [3]
97:15, 24; 99:2
opinion [8]
75:4; 80:20; 81:4; 86:19; 100:7, 14, 15, 17
OPINIONS [2]
4:10; 96:11
Opinions [1]
96:20
opinions [13]
6:17; 79:10, 25; 80:2; 87:8; 90:21, 22; 91:5; 92:4, 24; 95:25; 97:7; 98:8
opportunity [1]
95:20
oral [3]
77:1; 85:13; 88:13
Order [1]
113:10
order [5]
20:3; 65:23; 90:14, 25; 97:11
orders [1]
86:2
Organization [4]
6:8; 102:18, 20; 103:1
organizations [1]
22:10
Original [1]
113:24
original [4]
92:18, 20; 113:21
Orleans [2]
2:24; 112:24
out-of-pocket [1]
30:1
outside [1]
106:14
overall [2]
50:9; 61:1
overbroad [1]
98:25
overseeing [1]
51:16
owned [3]
52:20; 55:2; 58:3
owns [1]
49:17
oxygen [1]
84:19

- P -

P-e-r-a-l-e-s [1]
15:23
packs [1]
12:8
PAGE [1]
4:6
Page [2]
107:19; 108:13
page [3]
47:16; 92:14; 111:10
Pages [1]
6:19
pages [9]
47:14; 88:15; 92:14; 93:21; 105:14, 16; 107:3, 6, 7
paid [5]
29:22; 61:23; 62:14; 63:12; 113:25
PAOLINI [15]
1:14, 21; 4:2, 9, 10; 5:1; 7:1; 48:13; 94:23, 24; 96:10, 11; 111:4, 16; 113:2
Paolini [9]
5:21; 6:15; 7:7, 8; 11:3, 4; 48:20; 90:4; 96:20
Paolini's [1]
5:16
paper [2]
33:13; 47:14
paperwork [1]
93:6
PARAGRAPH [2]
4:11; 96:12
Paragraph [1]
96:21
parents [2]
11:7; 12:17
part [5]
86:17; 89:20; 90:6, 21; 92:1
participated [1]
67:19
parties [2]
112:14; 113:4
party [3]
13:17; 14:1, 5
Pasteur [1]
10:9
patient [22]
15:10; 52:10; 56:18, 20; 59:21; 62:13, 24; 63:7, 12; 69:15; 70:11, 12, 23; 71:2, 18, 24; 73:14; 78:20; 81:12, 18, 21
patient's [2]
15:19, 21
Patients [1]
59:23
patients [83]
25:15; 37:11, 23; 38:5, 6; 40:15, 19; 41:16, 19, 21; 44:5, 10, 15, 23; 46:19; 55:25; 56:2, 5, 13, 24; 60:6, 7, 9, 20, 21; 61:7, 13; 62:8, 13, 18, 23, 25; 63:20, 25; 64:8, 12, 17; 68:1; 69:23; 70:4, 15; 72:5, 23; 73:3, 11, 13, 24; 74:2, 14, 15; 75:23; 76:2, 5, 6, 10, 13, 17, 21, 25; 77:5, 9, 13, 18; 78:8, 12, 25; 80:3; 81:13; 84:4; 85:7, 24; 86:5, 12, 18; 100:11; 101:11, 13, 17; 104:15, 16; 105:5
pay [4]
60:8, 10; 62:9; 64:18
payer [5]
41:22; 42:25; 56:11; 62:7, 10
payers [1]
41:23
paying [1]
74:18
Pedro [9]
51:16, 18, 24; 52:6, 14; 54:3, 5, 9, 17
people [9]
34:10, 21; 43:9; 56:8, 11; 63:4; 64:6; 89:18; 98:9
Perales [1]
15:21
percent [21]
55:22; 56:17; 59:14, 15; 60:13; 61:12; 63:21, 23, 24; 64:10, 14; 83:6, 7, 8, 13, 14, 23; 84:2; 97:21, 22; 101:16
percentage [20]
59:25; 60:7, 10, 20; 62:13, 18, 23; 63:2, 17; 74:23; 75:2, 5, 15, 18; 82:20; 83:2, 10, 20; 84:9; 101:10
percentages [2]
64:3; 98:2
period [8]
41:11; 43:2, 7; 51:14; 59:13; 62:11; 63:5; 64:13
person [1]
35:24
PersonaCare [5]
49:22, 23; 51:8; 52:16, 20
personal [1]
67:24
personally [2]
25:11, 20
persons [1]
2:1
pertaining [1]
25:16
Phillip [1]
2:12
phone [4]
32:23; 35:24; 37:8; 103:10
phrase [2]
99:10, 12
phrased [2]
22:21; 67:16
physical [2]
51:22; 79:17
physician's [1]
86:2
pick [1]
98:12
piece [1]
50:8
pilot [1]
74:1
place [8]
9:13; 10:2; 30:12; 40:13; 46:5, 10; 65:15; 71:21
placed [3]
54:3, 10, 22
placement [1]
38:6
places [1]
51:9
Plaintiff [2]
1:22; 2:6
plan [2]
68:14; 108:7
play [1]
71:11
Please [2]
7:6; 113:3
please [12]
7:25; 8:1, 4; 14:12; 16:19; 20:8; 22:9; 62:3; 81:1; 92:17; 93:10; 104:25
Pogue [1]
2:16
point [11]
15:5; 24:16, 18; 40:25; 41:17; 48:10; 53:2; 63:7; 66:2, 4; 72:14
policies [2]
44:6; 65:14
policy [2]
23:20; 35:12
poorly [2]
22:21; 67:16
population [21]
75:19; 79:12; 82:14, 20; 83:11, 18; 84:7, 12, 13; 85:8, 12, 16, 20, 25; 86:9; 98:22; 100:2, 10, 25; 108:19
position [2]
46:21; 58:20
positions [1]
55:10
positively [1]
103:15
practices [5]
43:5; 67:9, 25; 68:25; 69:5
Predominantly [1]
73:23
predominantly [1]
62:9
prefer [1]
104:19
preparation [1]
91:3
prepared [9]
43:18, 21, 24; 47:20, 22; 48:25; 53:16, 19; 96:24
presence [1]
13:10
present [7]
2:1; 10:8; 29:2; 30:24; 31:18; 32:5; 113:4
pretty [3]
17:5; 18:15; 38:8
previous [1]
45:10
previously [2]
47:12; 109:22
primarily [1]
97:20
Prior [2]
21:10, 11
prior [5]
14:22; 47:22; 49:19; 50:24; 93:2
Private [1]
62:9
private [4]
60:8, 10; 64:18; 74:18
privilege [2]

51710 5906

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25:2; 68:14
problems [6]
79:12, 17, 22; 80:1; 85:21; 108:20
Procedure [2]
113:7, 8
procedures [2]
56:3; 65:14
proceedings [1]
112:9
process [3]
24:7; 65:6, 12
processes [1]
33:3
produced [7]
6:4, 6; 34:3; 38:11; 90:14, 25; 91:12
products [3]
21:4, 9; 46:3
professional [1]
23:23
program [8]
18:20, 23; 19:22; 54:14; 72:17; 73:9; 103:20; 104:4
programs [2]
74:1, 11
prohibit [1]
13:8
project [1]
37:15
provide [5]
42:21; 45:23; 74:14; 79:1; 97:19
provided [22]
5:15; 18:19; 19:5; 44:10, 15, 22; 45:3; 47:15; 48:22; 73:1, 2; 75:1; 90:6; 93:12, 16; 99:14; 101:19, 25; 102:6, 16, 21; 105:25
PUBLIC [1]
111:23
public [1]
10:18
pull [1]
46:20
purport [1]
34:10
PURSUANT [2]
4:11; 96:12
Pursuant [2]
5:10; 96:20
pursuant [2]
1:25; 113:7

- Q -

quarter [1]
21:21
question [26]
7:24; 8:1; 22:21; 33:22; 42:18; 44:20; 58:17; 67:17; 68:13, 17, 22; 71:8; 75:9; 78:23, 24; 86:13; 90:3; 92:12, 17; 101:22; 102:7; 104:23; 106:10, 18; 108:25; 113:25
questions [7]
40:14, 18; 71:23; 79:14; 97:10, 14; 106:25
quick [1]
34:14
QUINN [41]
2:3; 5:10; 7:5; 8:22; 25:3; 34:15; 35:16; 47:1; 49:8; 60:24; 61:4; 62:20; 68:8, 18; 69:19; 75:10; 82:13, 24; 83:17; 87:13, 21; 88:22; 91:11; 95:9; 100:7, 14; 101:23; 102:9; 104:20, 24; 105:21; 106:5, 9, 17; 107:10, 16; 108:4; 109:4, 16; 110:7; 113:22
Quinn [30]
2:4; 5:13; 6:5, 14, 18; 7:8; 8:25; 25:7; 34:17; 35:20; 48:19; 49:13; 61:9; 68:20; 69:21; 75:13; 82:17; 83:5, 22; 88:10; 89:1; 91:16; 95:4, 18; 96:17; 100:9, 21; 102:12; 106:15; 108:11
quit [6]
12:21, 23; 80:11, 13, 14, 15

- R -

raised [1]
10:16
ran [1]
48:6
range [3]
5:24; 6:12; 63:16
rank [1]
21:19
ranks [1]
74:6
rate [5]
60:5; 71:1, 15, 16; 73:25
rates [4]
69:9; 70:14, 20; 71:6
read [14]
25:15, 19, 21; 64:25; 74:22, 25; 79:6; 80:5; 104:24; 107:7; 108:14, 16; 111:5; 113:17
reading [7]
41:15; 66:9; 72:13; 79:4, 8, 9; 107:25
reason [7]
14:2; 42:8; 43:13; 50:1; 79:13; 98:9, 11
reasons [2]
40:21; 54:9
Reaud [1]
2:4
Reavis [1]
2:16
recall [10]
18:16; 19:21; 21:20; 23:4; 31:1; 39:3; 78:10; 81:17; 93:21; 95:23
receive [2]
66:25; 103:4
received [7]
20:23; 22:22; 86:5; 89:12, 17; 90:4, 12
receiving [1]
56:5
RECESS [3]
47:6; 88:3; 109:11
recollection [1]
75:4
recommendations [1]
52:12
reconvene [1]
109:19
record [21]
5:9, 12; 6:23; 47:3, 10, 11; 87:20, 22, 24; 88:8; 102:10; 106:4, 8; 108:5; 109:8, 15, 23; 110:2, 10; 112:16; 113:3
recorded [1]
94:1
recordings [1]
93:25
records [5]
25:13; 33:4; 41:18; 42:5; 94:9
refer [1]
108:14
reference [2]
19:6; 36:16
reflect [1]
53:24
reflected [2]
36:7; 47:14
reflecting [1]
56:4
reflects [1]
92:14
regard [2]
65:19; 101:4
regarding [1]
35:12
regards [8]
20:25; 21:1; 22:11; 24:8; 36:16; 47:13; 52:8, 10
region [3]
57:15, 16, 18
regional [7]
51:17; 52:5; 54:6; 57:11, 17; 58:13; 59:1
registered [1]
48:3
regularly [3]
12:2, 5, 6
regulations [1]
67:16
regulatory [1]
52:10
rehabilitation [1]
108:23
reimburse [1]
78:15
reimbursed [6]
30:1; 69:14, 23; 70:1, 4; 81:6
reimbursement [6]
67:9, 20; 70:20; 71:1, 15; 84:16
reimbursements [1]
69:13
related [10]
16:1; 21:4, 8; 23:2; 46:2; 79:22; 80:1; 87:9; 112:13, 15
relating [3]
22:25; 34:6; 89:3
relation [1]
74:6
relationship [2]
26:22; 79:7
relevance [4]
8:21; 9:16; 51:4; 98:4
relevant [2]
91:22; 92:4
reliance [1]
6:19
relied [5]
25:22; 26:2; 38:15; 90:7; 93:12
rely [3]
38:11, 23; 90:22
relying [3]
5:22; 6:16; 99:11
Remember [1]
92:25
remember [10]
14:23; 15:17, 19; 16:6, 7; 19:25; 27:4, 25; 52:17; 53:8
render [2]
90:21; 91:5
rendered [1]
73:24
rendering [1]
90:22
repeat [3]
44:20; 101:22; 104:23
rephrase [2]
7:25; 86:22
replacement [1]
74:5
REPORT [2]
4:9; 94:23
Report [2]
6:9; 103:1
report [14]
34:4, 11; 43:19, 21, 22, 24; 47:20, 22; 52:19; 93:2, 7; 102:14; 106:22, 23
reported [1]
50:3
REPORTER [2]
5:7; 105:1
Reporter [2]
112:4; 113:23
Reporting [2]
2:23; 112:23
reports [4]
80:6, 7; 89:15; 105:25
representative [1]
89:13
representatives [1]
24:23
representing [1]
7:9
request [6]
58:21; 88:19; 89:9; 91:19; 106:7, 12
requested [3]
58:19; 94:19; 109:17
require [1]
78:25
required [9]
20:2, 4, 10; 68:11; 78:18; 85:3, 8, 13, 17
requirements [4]
65:18, 25; 104:5, 7
Research [4]
6:7; 102:17, 20; 103:1
research [19]
21:7; 22:19, 25; 25:11, 18; 36:12; 39:21, 25; 41:10, 13; 42:20; 44:13, 21; 48:4; 67:18; 74:22; 79:4, 20, 24
researched [5]
25:13, 15; 37:18, 19; 46:18
researching [1]
29:23
Reserve [2]
113:11, 12
reside [1]
77:25
residence [1]
8:7
resident [2]
13:21; 23:14
residents [23]
24:9; 38:8; 40:21; 81:5; 97:21; 98:18; 99:3, 4, 6, 8, 17; 100:3, 24; 101:5, 6, 7, 8; 13; 104:14; 105:4; 107:20; 108:17, 20
Resources [1]
6:1
respect [7]
26:22; 30:9; 32:10, 19; 42:24; 49:2; 108:8
respirators [1]
85:9
respiratory [1]
85:5
respond [1]
68:7
response [5]
90:14, 25; 103:10; 108:23, 24
responsibilities [2]
52:4; 58:10
responsive [5]
88:18; 89:9; 91:7, 19; 92:7
responsiveness [1]
113:12
rest [2]
74:7; 107:24
restate [2]
75:11; 81:1
restricting [1]
82:11
resume [7]
51:7; 53:16; 54:1; 55:8, 11, 17; 66:3
retain [1]
20:10
retained [3]
25:4; 28:15; 34:2
retainer [1]
89:3
Retama [11]
65:1, 2; 66:5, 7, 10, 14, 15, 18, 19; 67:3
retrieve [2]
38:2, 10
retrieved [5]
38:4, 7, 23; 102:22
review [6]
6:18; 41:18; 45:4; 93:10; 95:19, 20
reviewed [13]
5:21; 6:15; 32:16; 33:3; 38:15; 41:8; 43:22; 45:6; 46:7; 48:24; 91:3; 101:19, 25
Reviewing [1]
95:22
reviewing [5]
32:12; 33:6, 9, 15, 21
reviews [1]
48:1
Reynolds [2]
2:19; 29:16
Richardson [1]
1:24
Right [3]
60:11; 61:10; 64:11
right [5]
8:6; 51:10; 55:3; 99:23; 106:16
Rio [3]
10:17, 18; 16:24
RJR [1]
29:21
RN [2]
36:21; 79:1
Robert [1]
16:7
role [1]
14:5
roll [3]
63:1, 3, 6
roll-over [1]
64:16
Ron [1]
53:7
room [2]
78:5; 106:14
Ross [1]
2:17
Roughly [1]
59:25
Rules [6]
5:11; 68:9, 14; 108:8; 113:7, 8

51710 5907

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rules [1] 67:15

- S -

S-e-u-h-s [1] 35:2
safekeeping [1] 113:22
safety [3] 50:4, 6, 10
sample [1] 100:18
San [20] 8:8; 10:9; 15:14; 23:9; 36:6; 37:6, 21; 42:21; 49:15; 51:16, 18, 21, 24; 52:5, 13; 53:9; 54:3, 5, 9, 17
satisfied [1] 106:5
save [1] 33:25
saying [3] 67:15; 76:13; 86:8
school [4] 10:21; 11:21; 16:24; 21:20
schools [1] 10:18
SEAL [1] 112:18
search [3] 48:7, 8, 10
second [6] 9:21; 15:25; 30:19; 40:8, 12; 41:2
secret [2] 105:15, 17
Security [1] 10:23
selected [1] 98:5
Self-insured [1] 23:21
self-insured [1] 23:19
sell [1] 52:16
semester [1] 17:18
seminars [2] 20:18; 22:3
sentence [2] 107:25; 108:13
separate [3] 57:4; 77:24; 111:10
separately [1] 89:24
Services [4] 6:2; 34:23; 71:4, 6
services [8] 18:14; 44:9; 59:24; 73:1, 23, 25; 74:14; 84:12
sets [2] 70:25; 71:6
setting [2] 29:12; 73:25
Seuhs [8] 35:1, 3, 7, 8, 10, 22; 103:3
She's [6] 25:3, 4; 53:5; 100:15; 104:21; 106:20
she's [2] 91:12; 101:25
sheet [5] 32:14; 36:8; 47:14; 89:7; 93:21
sheets [4] 27:5; 33:18; 34:6; 93:19
short-stay [8] 99:4, 6, 17; 100:3, 24; 101:6; 104:15; 105:4
Shorthand [1] 112:3
show [3] 95:5; 104:13; 105:2
shows [1] 66:3
sic [1] 29:16
sign [3] 26:21; 29:17; 113:17
Signature [2] 113:16, 17
signed [2] 113:18, 19
significant [4] 17:6; 42:8, 12; 71:19
Silver [10] 15:14; 16:4; 55:1, 5, 20; 57:19; 58:16; 59:11; 60:2, 6
single [2] 12:3; 81:18
sir [21] 14:11; 15:4; 21:12; 45:9; 50:20; 51:20, 23; 52:15; 53:10; 56:19, 21; 57:5; 59:6, 9; 64:23; 65:4; 66:21; 72:3; 74:4; 89:23; 94:21
sit [1] 105:19
situations [1] 81:24
six [7] 19:19; 37:17; 47:8; 73:15, 19; 74:15
skill [3] 78:18, 21; 108:20
skills [1] 59:23
Smith [2] 2:23; 112:23
smoke [15] 11:15, 16; 12:6, 7, 9, 10, 12, 14, 19; 13:4, 6; 77:19, 23; 78:2
smoked [1] 11:19
smoker [5] 11:13, 22; 81:21, 22; 82:9
smokers [29] 12:17; 74:23, 24; 75:2, 3, 5, 15, 19, 20; 77:24; 84:4, 15, 18, 21, 24; 85:2, 11, 15, 19
smoking [25] 11:17, 24; 12:2, 5, 21, 24; 13:2, 9, 11, 14; 37:11; 78:5; 79:5, 22; 80:1, 6, 11, 21; 81:4, 12; 86:13, 14; 87:2, 5, 8
smoking-related [11] 21:1; 36:17; 37:12, 24; 44:16, 24; 45:1; 79:11; 81:14, 19, 23
Social [1] 10:23
social [1] 18:14
sold [1] 49:23
somebody [2] 73:16; 82:6
someone [1] 82:11
Somewhere [1] 20:17
somewhere [8] 20:16; 21:22; 28:1; 38:14, 17; 53:9; 72:14; 89:7
sorry [17] 18:18; 27:4; 31:8; 34:24; 45:5; 53:7; 69:19; 76:15; 77:3; 80:25; 99:22; 101:21; 102:3, 15; 104:3; 108:4, 12
sort [9] 23:19; 29:17; 32:14; 43:5, 18; 44:9; 75:1; 91:18; 94:4
source [3] 41:23; 102:22, 23
sources [1] 62:10
South [2] 2:10; 66:20
Southwest [3] 16:25; 17:8, 16
speaker [2] 22:2, 5
Special [2] 6:8; 103:1
specific [14] 21:5; 32:24; 45:1; 46:16; 47:19; 53:23; 63:15; 70:20; 71:1, 2, 7; 98:11; 103:19, 20
Specifically [2] 37:25; 99:13
specifically [10] 18:12; 26:12; 44:12; 53:16; 58:4; 63:19; 74:4; 79:22; 81:19; 86:14
speculation [1] 103:25
speeches [2] 22:13, 14
spell [3] 9:25; 15:22; 26:7
spells [1] 35:2
spend [3] 29:22; 37:15; 104:19
spent [5] 27:6, 12; 32:12; 33:5, 9
spoke [1] 28:7
spoken [3] 24:22; 25:8; 34:25
sponsored [2] 18:20, 22
staff [2] 56:23; 65:21
staffing [1] 65:16
standards [1] 35:12
STARLA [3] 2:23; 112:3, 22
start [3] 11:17; 60:3; 69:22
started [6] 11:23; 12:2, 4; 40:10; 66:19; 108:13
starting [2] 70:10; 88:17
STATE [3] 1:3; 111:1; 112:1
State [11] 7:9; 24:6; 34:21; 63:13; 67:10, 21; 69:2; 71:14; 72:1, 5; 98:21
state [7] 29:6; 97:18; 99:2, 16; 103:14, 17; 113:3
statements [2] 46:8; 97:23
STATES [1] 1:1
States [2] 74:7; 97:19
states [5] 98:18, 23; 103:20; 104:8, 9
statistical [1] 21:14
statistics [3] 42:2; 104:13; 105:2
status [4] 42:25; 62:8; 64:6; 74:19
stay [17] 41:20; 42:12, 21; 44:5; 99:7, 8, 18; 100:3, 24; 101:9; 102:19; 103:18, 21; 104:9; 105:6; 108:22
stayed [1] 41:21
stays [5] 101:20; 102:2; 103:14; 107:20; 108:21
stipulate [1] 113:4
Stipulation [3] 1:25; 112:11; 113:3
STIPULATIONS [1] 113:1
Stipulations [1] 113:3
stipulations [1] 5:8
stop [1] 7:25
strain [1] 16:11
Street [3] 2:4, 24; 112:24
stress [1] 107:7
strokes [1] 78:13
structural [1] 50:8
studied [2] 20:19; 21:3
studies [11] 21:7; 45:23; 67:19; 99:5, 6, 10, 11, 12, 16, 21; 109:3
study [1] 100:17
stuff [1] 93:11
styled [1] 111:6
sub [4] 91:2; 92:6, 11, 16
subject [3] 18:12; 20:9; 39:3
subjects [3] 22:25; 23:2; 44:2
submitted [4] 43:9; 46:8; 97:2, 3
Subpoena [1] 113:9
subpoena [2] 27:17; 49:9
SUBSCRIBED [1] 111:19
suctioning [1] 85:13
sued [1] 24:7
suffered [1] 11:10
suing [1] 24:8
summary [1] 92:19
supervisor [2] 53:6; 58:22
supplied [4] 19:1; 25:23; 26:18; 34:19
supply [1] 91:22
supported [1] 98:2
supposed [1] 27:18
Surgeon [1] 80:5
surprised [1] 107:10
surveyed [1] 100:19
survive [1] 52:23
suspicious [1] 69:4
Suzette [1] 15:21
swear [1] 113:23
SWORN [1] 111:19
sworn [2] 7:2; 112:6
system [7] 50:10; 56:12; 67:9, 20; 70:6, 9
Systems [1] 3:2

- T -

table [2] 87:12; 107:21
talk [4] 35:21; 39:12; 62:18; 106:14
talked [6] 34:18, 21; 35:3; 59:5; 90:15, 16
talking [7] 62:17, 19; 63:4, 19; 82:13; 83:16; 84:5
talks [3] 22:11; 89:2; 107:19
Tape [3] 88:1, 7; 110:12
TECHNICIAN [1] 3:1
telephone [2] 28:8; 35:25
tells [1] 80:14
temporary [1] 66:4
Ten [1] 39:1
ten [4] 11:18, 19; 12:11; 39:2
tend [3] 107:20; 108:17, 20
tendered [1] 106:20
term [4] 39:13; 57:2; 66:8; 97:19
terminal [1] 73:16
terminated [3] 49:21, 22, 24
termination [1] 50:2
terminology [1] 97:16
terms [5] 21:19; 29:20; 56:18; 63:16; 70:11

51710 5908

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Terrace [10]
51:16; 52:2; 53:11; 54:2; 61:12, 14, 24; 62:4; 64:9; 101:16
test [2]
79:15; 105:22
testified [2]
7:2; 96:23
testify [2]
14:18; 45:14
testifying [2]
23:24; 45:11
testimony [7]
7:19; 33:12; 84:11; 94:18; 95:11; 111:5; 112:5
TEXARKANA [1]
1:2
TEXAS [3]
1:1, 3; 112:1
Texas [55]
1:24; 2:5, 18, 25; 3:3; 5:25; 6:9; 7:10; 8:8; 9:2; 10:9, 17, 25; 15:14; 16:25; 17:1, 2, 3, 5, 8, 16; 18:24; 24:6; 31:12, 15; 34:22; 35:9; 37:21; 57:20; 62:12; 63:14; 67:3, 10, 21; 68:10; 69:2; 71:3, 6, 14; 72:1, 6; 74:6; 75:19; 97:18, 21; 98:21; 100:10, 25; 104:4, 14; 105:3; 108:7; 112:25; 113:7
Texas-specific [3]
101:18, 24; 102:18
textbooks [1]
18:16
Thank [4]
49:11; 58:25; 77:22; 88:24
therapist [1]
85:5
There's [3]
65:17; 74:12; 83:19
there's [1]
79:11
thereby [3]
56:1; 59:20; 70:23
third [4]
31:14; 41:3; 43:14; 88:12
THORPE [1]
2:3
thoughts [1]
33:14
Three [2]
31:17; 46:12
three [12]
14:24; 15:18; 25:10; 30:10, 22; 40:9, 13; 41:2, 4; 43:14; 44:3; 103:5
TILE [11]
70:6, 9, 10, 16, 23; 71:2, 7, 15, 17, 19, 23
TILE's [1]
71:11
timely [1]
113:19
times [7]
7:14; 8:15; 24:22; 25:8, 10; 35:21; 80:17
title [2]
58:17; 66:9
titled [3]
5:25; 6:7; 96:19
to-wit [1]
7:3
TOBACCO [1]
1:5
tobacco [22]
20:20; 21:4, 9; 24:7, 8; 25:9, 23; 26:18, 23; 30:8; 31:3; 44:8; 45:19, 22, 24; 46:3, 21; 47:25; 79:18; 92:2; 95:24; 96:24
tobacco-related [2]
22:14; 44:11
Tolles [1]
2:10
Tom [7]
35:1, 3, 6, 8, 22; 103:3
topic [1]
37:25
topics [2]
40:23; 44:4
total [4]
19:21; 63:24, 25; 70:11
totally [1]
59:21
train [2]
56:23
training [7]
17:2; 21:13, 16; 36:20; 54:14; 55:23; 67:1
Trammell [1]
2:17
transcript [2]
111:5; 112:9
transition [1]
52:23
treated [2]
56:3; 81:14
treatment [2]
56:4; 84:12
treatments [1]
84:22
trial [6]
7:20, 21; 94:18; 113:13, 19, 22
true [3]
42:24; 60:14; 111:7
trunk [3]
38:21; 89:22; 91:21
Twice [3]
7:15; 8:16; 35:23
twice [1]
68:17
type [24]
13:18, 20; 14:19; 16:14; 19:13, 15; 23:12, 24; 26:21; 40:18; 41:6; 44:14, 22; 45:19; 49:25; 52:9; 54:12; 56:4; 59:21; 60:6; 74:10; 79:17; 85:4; 92:22
typed [2]
33:2; 112:8
types [6]
15:7; 40:19; 44:5; 55:24; 56:24; 80:2
Typically [2]
56:15; 63:3
typically [1]
74:18

- U -

Uh-huh [2]
17:25; 92:13
unaware [1]
5:22
unclear [1]
56:16
understand [8]
7:16, 19, 22, 25; 42:18; 48:8; 67:14; 88:15
understanding [5]
31:2, 10; 35:6; 69:8; 71:14
unemployed [1]
37:5
Unit [1]
57:3
UNITED [1]
1:1
United [1]
97:19
units [1]
57:4
University [3]
17:3; 18:24; 37:21
unsigned [1]
113:19
update [1]
53:24
updated [1]
53:18
updating [1]
53:23
upscale [1]
61:17
UT [2]
18:11; 19:22
utilization [2]
55:22; 56:17
utilized [1]
56:11
utilizing [1]
74:7
Uvalde [2]
17:1, 8

- V -

vague [9]
42:10, 15; 62:2; 69:11; 72:8; 78:23; 82:2; 86:21; 98:25
Vari-Care [3]
15:12; 59:2, 7
variable [3]
103:18, 22; 104:9
vary [1]
103:14
vehicle [1]
13:15
Vencor [5]
49:23, 24; 52:16; 53:6, 13
vendor [4]
54:3, 10, 17, 23
versus [5]
60:8; 84:15; 104:15; 105:5, 6
vice-president [1]
52:21
VIDEO [2]
6:21; 88:5
Video [1]
113:6
video [2]
1:20; 88:13
videoed [1]
113:5
VIDEOGRAPHER [6]
47:2, 8; 87:23; 109:7, 13; 110:9
VIDEOTAPE [1]
3:1
videotape [2]
93:25; 107:18
videotapes [1]
94:5
viewing [1]
107:18
violation [1]
108:6
VITAE [2]
4:8; 48:14
VS [1]
1:4

- W -

Waco [2]
17:4; 19:9
waived [1]
113:17
wanted [2]
39:16; 109:23
water [1]
77:21
Watson [3]
52:22, 23; 53:1
Webb [2]
9:18, 19
week [3]
12:9; 19:20; 34:4
weekend [1]
76:15
weeks [5]
31:17; 41:4; 43:14; 44:3; 103:5
West [5]
65:1, 2; 66:5, 14, 15
Westcott [1]
3:3
What's [3]
10:23, 25; 98:4
what's [8]
48:20, 21; 65:11; 88:11; 91:11; 95:5; 96:2, 18
WHEREUPON [1]
110:16
White [5]
8:18, 19; 9:1, 4; 11:4
whoever [2]
18:20; 24:23
willing [2]
106:19; 109:24
WITNESS [4]
42:19; 105:9, 17; 108:1
Witness [5]
91:20; 112:5; 113:17, 23
witness [11]
1:21; 14:19; 24:4; 25:4; 26:23; 28:16; 68:12; 87:15; 104:21; 106:13; 109:17
witnessed [1]
43:4
witnesses [1]
34:10
won't [1]
68:16
word [1]
32:24
wording [1]
92:25
words [1]
99:21
work [10]
10:10; 27:24; 30:4; 32:10, 20; 37:4; 40:10; 41:4, 6; 49:14
worked [14]
10:14; 23:11, 12; 43:3, 8; 51:8; 55:1; 61:3, 5; 62:21; 68:2; 69:1, 6; 87:1
working [15]
15:11; 16:2; 18:6, 7; 25:12; 26:3; 27:6, 12; 31:13; 43:9; 47:23; 62:11; 80:19; 81:3; 83:9
works [2]
70:8; 71:21
wouldn't [3]
11:21; 12:6; 60:1
write [2]
33:14, 23
writing [1]
92:23
written [3]
33:13; 106:21, 23
wrote [2]
36:11; 100:15

- Y -

Y-v-o-n-n-e [1]
26:10
Yeah [6]
21:6; 33:1; 69:12; 78:23; 87:21; 105:9
year [8]
10:15, 20; 14:23; 15:17; 16:25; 17:7, 13, 15
years [15]
8:10; 9:3; 11:18, 19; 12:11, 22; 14:24; 15:18; 20:14; 79:8, 9; 97:22; 98:10; 99:9; 101:9
Yesterday [1]
32:1
yesterday [3]
32:2; 46:6, 11
you've [5]
64:22; 89:6, 20; 92:1; 93:20
you-all [2]
87:15; 110:1
young [1]
15:9
yourself [4]
13:17; 25:17; 46:1; 80:8
Yvonne [1]
26:6

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